

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719
5 Plaintiff, -
6 v. - Toledo, Ohio
7 MOHAMMAD ZAKI AMAWI, et al., - April 23, 2008
8 Defendants. - Trial
9 -----

10 VOLUME 33, TRANSCRIPT OF TRIAL
11 BEFORE THE HONORABLE JAMES G. CARR
12 UNITED STATES DISTRICT CHIEF JUDGE, AND A JURY

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office
15 By: Thomas E. Getz
16 Justin E. Herdman
17 801 Superior Avenue, W
18 Cleveland, OH 44113
19 (216) 622-3840

20 U.S. Department of Justice
21 By: Jerome J. Teresinski
22 David I. Miller
23 10th & Constitution Ave, NW
24 Washington, DC 20530
25 (202) 353-3464

Office of the U.S. Attorney- Austin
By: Gregg N. Sofer
816 Congress Avenue
Austin, TX 78701
(512) 916-5858

1 For the Defendant Amawi: Office of the Federal Public
Defender - Cleveland
2 By: Amy B. Cleary
Jonathan P. Witmer-Rich
3 Edward G. Bryan
Timothy C. Ivey
4 750 Skylight Office Tower
1660 West Second St.
5 Cleveland, OH 44113
(216) 522-4856

6
Muawad & Muawad
7 By: Elias Muawad
36700 Woodward Avenue, Suite 209
8 Bloomfield Hills, MI 48304
(248) 594-4700

9 For the Defendant Kerger & Kerger
10 El-Hindi: By: Stephen D. Hartman
Suite 201
11 33 South Michigan Street
Toledo, OH 43602
12 (419) 255-5990

13 Boss & Vitou
By: Charles M. Boss
14 111 West Dudley Street
Maumee, OH 43537-2140
15 (419) 893-5555

16 Raslan, El-Kamhawy & Pla
By: Alek H. El-Kamhawy
17 Suite 3FE, 1700 East 13 Street
Cleveland, OH 44114
18 (216) 928-1500

19 For the Defendant David L. Doughten
Mazloun: 4403 St. Clair Avenue
20 Cleveland, OH 44103-1125
(216) 361-1112

21
Helmick & Hoolahan
22 By: Jeffrey J. Helmick
2nd Floor
23 1119 Adams Street
Toledo, OH 43624-1508
24 (419) 243-3800

25

1 Mohammed Abdrabboh
2 1620 Ford Avenue
3 Wyandotte, MI 48192
4 (734) 283-8405

5 Court Reporter: Tracy L. Spore, RMR, CRR
6 1716 Spielbusch Avenue
7 Toledo, Ohio 43624
8 (419) 243-3607
9
10
11
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15
16
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23 Proceedings recorded by mechanical stenography, transcript
24 produced by notereading.
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1 (Commenced at 8:44 a.m.)

2 THE COURT: With regard to the motion the

-08:-44:-04 3 government filed yesterday, there was a bit of research on the

-08:-44:-04 4 issue of the child support. I found some cases on the issue of

00:00:35 5 cross-examination of government witness on unpaid child support,

-08:-44:-04 6 denial of such examination was not an abuse of discretion U.S.

00:00:50 7 v. Geams, 427 F.3d 1333, 1339 Tenth Circuit, 2005; U.S. v.

-08:-44:-04 8 Purnell, P-u-r-n-e-l-l, Westlaw 647032 F. 5, unpublished

-08:-44:-04 9 decision, Fourth Circuit, 1998; and U.S. v. Civella, 666 F.2d

-08:-44:-04 10 1122, Eighth Circuit, 1981.

-08:-44:-04 11 However, also I found the D.C. Circuit Case, which

-08:-44:-04 12 I think was on point and pertinent, U.S. v. Whitmore, 359 F.3d

00:01:42 13 609 at page 615, 360 U.S. App. D.C., 2004, D.C. Circuit, where

00:01:50 14 it held that the failure to permit cross-examination of a

00:01:56 15 government witness with regard to a license suspension that

00:02:02 16 resulted due to the witness's failure to pay child support, the

00:02:11 17 Court erred and it was reversible error to not allow the

00:02:18 18 cross-examination as to both subjects. But for the failure to

-08:-44:-04 19 pay child support, the license wouldn't have been suspended.

00:02:27 20 I also found another Fourth Circuit case, U.S. vs.

-08:-44:-04 21 Powell, 42 Fed. Appx. 565, 569, 2002 Westlaw, 1733-819 at star 2

00:02:47 22 where the witness testified he loved the child, and testimony on

00:02:56 23 direct portrayed him as an involved father. Cross-examination

00:03:00 24 would be proper to impeach his veracity and credibility as to

-08:-44:-04 25 the fact he did not pay child support.

-08:-44:-04 **1** So as to that issue, I will permit some limited
00:03:10 **2** inquiry. Not into great elaborate detail, but I think that the
-08:-44:-04 **3** arrearage and the period of arrearage and the extent to which
00:03:25 **4** it's increased or decreased is pertinent.

-08:-44:-04 **5** And one of the cases I may not have picked up, I
00:03:51 **6** appear not to have copied the reference -- I think it was the
00:03:56 **7** Whitmore case, if memory serves, indicating that this kind of
-08:-44:-04 **8** inquiry into a witness's indifference to his legal obligations
-08:-44:-04 **9** and requirements is a proper subject of cross-examination.
00:04:18 **10** Again, that does not indicate -- that does not open the door to
00:04:24 **11** trial of the witness as to that topic. But it is proper to
-08:-44:-04 **12** ask, see what he has to say and go from there.

00:04:45 **13** With regard to the prior drug use, when did that
-08:-44:-04 **14** occur? Did he acknowledge he was using on a couple occasions
00:04:57 **15** during the course of this investigation? I just can't
00:05:00 **16** remember.

00:05:01 **17** MR. SOFER: I believe the testimony, Your Honor,
00:05:03 **18** was that the vast amount of the drug use was during --

-08:-44:-04 **19** THE COURT: Military service.

-08:-44:-04 **20** MR. SOFER: Not even his military service, during
-08:-44:-04 **21** the time he worked for the Drug Enforcement Administration.

-08:-44:-04 **22** Again, the government's already questioned the witness about --

-08:-44:-04 **23** THE COURT: I tend to agree. If they want to

-08:-44:-04 **24** simply confirm that. We're not going to go into that. It's

00:05:26 **25** remote in time. Obviously, if there were reason to believe it

-08:-44:-04 **1** occurred during the course of this investigation, it might have
00:05:33 **2** impaired his ability to observe, et cetera, et cetera, et
00:05:39 **3** cetera.

00:05:39 **4** MR. SOFER: And he did testify, Judge -- to be
-08:-44:-04 **5** clear, he did testify he had used marijuana at some point while
-08:-44:-04 **6** he was working for the FBI and, of course, the government
00:05:49 **7** concedes that that is a proper area of cross-examination as
-08:-44:-04 **8** well.

00:05:53 **9** MR. BOSS: Your Honor, the issue is not drug use.
00:05:57 **10** The issue is his failure to disclose it when asked specifically
-08:-44:-04 **11** on the forms for the DEA and for the FBI, and also for the
00:06:08 **12** military security clearance which he obtained.

-08:-44:-04 **13** THE COURT: I think that's been brought out. You
-08:-44:-04 **14** can confirm that. But again, I don't think --

00:06:17 **15** MR. BOSS: There's also, if I may, an indication in
-08:-44:-04 **16** the government's Jencks letter, which I'm trying to find, that
00:06:25 **17** he continued to use as recently as 2006, while he was still in
-08:-44:-04 **18** the employ and being paid by the government, so it would appear
00:06:40 **19** it's not distant in time, it's ongoing. The drug use -- they
-08:-44:-04 **20** indicate there was marijuana use.

-08:-44:-04 **21** THE COURT: I'll let you touch upon that, but
00:06:59 **22** again, we're not going to have a trial as to --

00:07:01 **23** MR. BOSS: I don't intend to pry into the details.

-08:-44:-04 **24** THE COURT: The misdemeanor offense, I don't think
00:07:09 **25** that has anything to do with anything. It's 1992, bad check.

-08:-44:-04 **1** It would require some kind of -- although it's extrinsic, I'm
00:07:27 **2** not going to let you go into that.

-08:-44:-04 **3** The same with the military punishment. That's

-08:-44:-04 **4** been brought out. I see no reason to go into that again.

00:07:35 **5** That's not a criminal conviction. If we start going into that,

-08:-44:-04 **6** then we've got to waste time on something that really has no

00:07:46 **7** probative value as far as I can tell.

00:07:48 **8** MR. IVEY: I'm sorry?

-08:-44:-04 **9** THE COURT: That has no probative value as far as I

-08:-44:-04 **10** can tell.

-08:-44:-04 **11** MR. IVEY: The punishment --

00:07:58 **12** THE COURT: Military punishment.

00:08:00 **13** The bench warrant, if you want to speak to that

-08:-44:-04 **14** issue, please do. Apparently he had a jet ski violation and

00:08:12 **15** was served a summons and didn't show up; is that what happened?

-08:-44:-04 **16** MR. HARTMAN: I believe that's what the letter

-08:-44:-04 **17** said, yeah. He got a citation for a jet ski in 1992.

-08:-44:-04 **18** THE COURT: An actual summons, or he had to pay \$25

00:08:27 **19** or \$125. As far as I'm concerned, people with those things

-08:-44:-04 **20** ought to pay \$2,500 for taking them out. As a lakeside

00:08:38 **21** property owner whose slumber is sometimes disturbed by the

00:08:43 **22** obnoxious sound.

-08:-44:-04 **23** MR. SOFER: I think the testimony was he was issued

00:08:47 **24** -- the testimony was he was issued a summons of some sort, did

-08:-44:-04 **25** not pay it originally. There was some confusion on his part and

00:08:54 **1** ended up paying the money, and it was taken care of.

-08:-44:-04 **2** THE COURT: It's already been -- I just don't think

-08:-44:-04 **3** you should go into it. Again, I don't see any probative value.

00:09:03 **4** I do, though, think the child support issue --

00:09:12 **5** Let me take a quick look at the exhibit.

00:09:16 **6** MR. HERDMAN: I didn't actually send it. My plan

-08:-44:-04 **7** was to file it under seal this morning. I have a copy. It

00:09:26 **8** should only take a couple seconds to look this over, Your Honor.

00:10:56 **9** MR. BOSS: Actually, Your Honor, I had not seen

-08:-44:-04 **10** this until just now.

-08:-44:-04 **11** THE COURT: Take a moment. I'm looking at the

-08:-44:-04 **12** case.

00:11:04 **13** MR. BOSS: Sure. May I ask a question?

00:11:22 **14** (Discussion had off the record.)

00:11:44 **15** MR. BOSS: Your Honor, could we ask the Court to

00:11:47 **16** please reserve judgment on this, not do it now?

-08:-44:-04 **17** THE COURT: Okay. That's fine. Are we all set

00:11:54 **18** then? Are we all set?

00:12:01 **19** MR. SOFER: Judge, do you want the witness on the

-08:-44:-04 **20** stand now?

-08:-44:-04 **21** THE COURT: Please. Unless anybody has anything

-08:-44:-04 **22** else, we'll get the jury in the box.

00:12:49 **23** There is an excerpt of the case, Toohy,

00:12:55 **24** T-o-o-h-e-y, it's a Military Court of Appeals case, 60 M.J.,

00:12:59 **25** appears to permit cross-examination of that sort. But the

-08:-44:-04 **1** witness had testified affirmatively, apparently thought -- or
-08:-44:-04 **2** there had been character evidence, I'm just reading, about his
00:13:23 **3** character for peacefulness. I don't think we have anything of
-08:-44:-04 **4** that sort here.

00:13:30 **5** MR. SOFER: Again, Judge, the government elicited
-08:-44:-04 **6** this negative information from the witness.

00:14:30 **7** (The jury enters the courtroom.)

00:14:31 **8** THE COURT: Ladies and gentlemen, for those of you
00:14:34 **9** who may not recall, I'm Judge Carr. Let me explain why we took
-08:-44:-04 **10** the recess that we did. Principally to attend to a fair number
-08:-44:-04 **11** of evidentiary issues that I decided to try to address to the
-08:-44:-04 **12** extent that I could during that interlude, and also give Counsel
-08:-44:-04 **13** the opportunity to prepare themselves for direct and then
00:15:02 **14** ultimately redirect -- or cross-examination, and ultimately
00:15:06 **15** redirect examination. The government had indicated that and
-08:-44:-04 **16** represented, and it's quite accurate, that its examination of
00:15:18 **17** Mr. Griffin, its direct examination had been a good bit or
00:15:22 **18** somewhat shorter than all of us anticipated. And I apologize
-08:-44:-04 **19** for any inconvenience, particularly having you called on Monday
-08:-44:-04 **20** to indicate not to come yesterday.

-08:-44:-04 **21** But we are back in business. Mr. Griffin, you
-08:-44:-04 **22** remain under oath. I believe Mr. Ivey will conduct
00:15:42 **23** cross-examination. And I should indicate that there may be
00:15:45 **24** some issues -- there were some issues we couldn't resolve until
-08:-44:-04 **25** we were all actually here and questions were asked and

00:15:55 **1** objections were made. So there may be some disruption and
-08:-44:-04 **2** sidebars more frequently than has occurred so far. I apologize
00:16:10 **3** for that. It's just the way things work. So don't hold it
00:16:14 **4** against anybody if we wind up jumping up and down and going over
-08:-44:-04 **5** there from time to time.

00:16:24 **6** Okay. Mr. Ivey, you may examine.

00:16:28 **7** - - -

00:16:28 **8** DARREN GRIFFIN, CROSS-EXAMINATION

-08:-44:-04 **9** BY MR. IVEY:

-08:-44:-04 **10** **Q.** Mr. Griffin, the government had provided you with a
00:16:31 **11** guide in case you wanted to reference it for dates and times.

-08:-44:-04 **12** That should be up there for you to look at should you decide to
-08:-44:-04 **13** refer to it.

00:16:40 **14** **A.** Thank you.

-08:-44:-04 **15** **Q.** When you began your work as an operative for the FBI in
-08:-44:-04 **16** this matter, you were given various instructions by the FBI; is
00:16:56 **17** that correct?

00:16:56 **18** **A.** As in information gathering, yes.

00:17:00 **19** **Q.** You were told by the FBI to focus on the Muslim
00:17:03 **20** community; is that correct?

00:17:06 **21** **A.** Yes.

00:17:08 **22** **Q.** So religion was a factor in the decision by the
-08:-44:-04 **23** government on who to target, correct?

00:17:16 **24** **A.** No, actually it was just the threats or the people of
00:17:22 **25** interest were in the Muslim community.

- 00:17:25 **1** Q. Well, your testimony on direct examination, and I think
-08:-44:-04 **2** you just said just now, you were asked to focus on the Muslim
00:17:34 **3** community, correct?
- 08:-44:-04 **4** A. People in the Muslim community, yes.
- 08:-44:-04 **5** Q. So it wasn't people in the Jewish community?
- 00:17:40 **6** A. No, it was not.
- 08:-44:-04 **7** Q. It wasn't people in the Christian community?
- 08:-44:-04 **8** A. It was not.
- 08:-44:-04 **9** Q. It was people in the Muslim community, correct?
- 00:17:47 **10** A. For the most part, yes.
- 00:17:49 **11** Q. So one of factors was religion?
- 00:17:52 **12** A. Possibly.
- 00:17:54 **13** Q. The other thing -- one of the factors that caused you to
-08:-44:-04 **14** look at Mr. Amawi was the fact that his appearance had changed.
-08:-44:-04 **15** He had grown a long beard when he returned from Jordan; is that
-08:-44:-04 **16** correct?
- 08:-44:-04 **17** A. That is incorrect.
- 00:18:10 **18** Q. The beard that Mr. Amawi grew was not a factor in your
00:18:16 **19** discussion and direct examination of how he had become more
00:18:20 **20** radical?
- 00:18:21 **21** A. No, I just stated about his appearance, that wasn't a
-08:-44:-04 **22** factor.
- 08:-44:-04 **23** Q. The government went through with you photographs of Mr.
-08:-44:-04 **24** Amawi about his appearance?
- 08:-44:-04 **25** A. Yes.

-08:-44:-04 **1** Q. And before his trip to Jordan, they showed you a series
-08:-44:-04 **2** of photographs where Mr. Amawi had a shorter beard or no facial
-08:-44:-04 **3** hair, correct?

-08:-44:-04 **4** A. Correct.

00:18:41 **5** Q. And then when he returned from Jordan they showed you a
-08:-44:-04 **6** series of photographs where Mr. Amawi had grown a much longer
-08:-44:-04 **7** beard; is that correct?

-08:-44:-04 **8** A. Correct.

-08:-44:-04 **9** Q. But you're telling the ladies and gentlemen of the jury
00:18:52 **10** that the beard -- that appearance had no factor in targeting Mr.
-08:-44:-04 **11** Amawi for investigation?

-08:-44:-04 **12** A. It was not.

-08:-44:-04 **13** Q. So the government's presentation of showing those
00:19:03 **14** different photographs basically provided nothing with respect to
-08:-44:-04 **15** your decision to target him as a person of interest, correct?

-08:-44:-04 **16** MR. SOFER: Objection, it was not in witness's
-08:-44:-04 **17** decision.

00:19:18 **18** THE COURT: Why don't we -- go ahead.

00:19:22 **19** A. I don't know what the FBI's determination was, but the
-08:-44:-04 **20** decision came from the comments Mr. Amawi made.

-08:-44:-04 **21** BY MR. IVEY:

-08:-44:-04 **22** Q. Exactly. So you would agree with me that a person's
-08:-44:-04 **23** appearance, that shouldn't really have anything to do with
00:19:36 **24** whether or not they're targeted for investigation, correct?

-08:-44:-04 **25** A. I would say so.

00:19:41 **1** Q. Because -- and their religion shouldn't have anything to
-08:-44:-04 **2** do with it either, should it?

00:19:49 **3** A. I would say so.

00:19:51 **4** Q. Because if you just focus on the Muslim community, if
-08:-44:-04 **5** you just focus on individuals with long beards, then the Timothy
-08:-44:-04 **6** McVeighs of the world and the Terry Nicholises of the world would
00:20:02 **7** escape this investigation?

-08:-44:-04 **8** MR. SOFER: Objection, Your Honor.

-08:-44:-04 **9** THE COURT: I would tend to agree. I think you're
00:20:07 **10** arguing with the witness. If the statement is appropriate, it
-08:-44:-04 **11** can be presented in closing argument. Go ahead.

00:20:17 **12** BY MR. IVEY:

00:20:17 **13** Q. The government gave you 20 persons of interest to look
00:20:20 **14** at or to gather information on when you began your work; is that
00:20:24 **15** correct?

00:20:24 **16** A. That is approximate.

00:20:27 **17** Q. But it is approximately 20?

-08:-44:-04 **18** A. Somewhere around there, yes.

00:20:32 **19** Q. That's the number you used in direct?

-08:-44:-04 **20** A. Correct.

-08:-44:-04 **21** Q. Of those 20, when you first got them, Mr. Amawi was not
-08:-44:-04 **22** one of those 20, was he?

-08:-44:-04 **23** A. Correct.

00:20:40 **24** Q. At the time you first looked at Mr. Amawi, he was not

00:20:45 **25** currently engaged in any type of criminal agreement or

00:20:50 **1** enterprise with Mr. Mazloum, was he?

00:20:53 **2** **A.** Not that I know of.

00:20:55 **3** **Q.** And as far as you know, Mr. Amawi was not involved in

-08:-44:-04 **4** any type of criminal agreement or enterprise with Mr. El-Hindi,

00:21:03 **5** was he?

-08:-44:-04 **6** **A.** None that I know of.

-08:-44:-04 **7** **Q.** In fact, at the time in June of 2004, that's when you

00:21:10 **8** first started looking at Mr. Amawi; is that correct?

00:21:15 **9** **A.** I believe during that time frame I reported to the FBI

00:21:21 **10** the statements that he made of trying to get into Iraq.

-08:-44:-04 **11** **Q.** That was in June of 2000?

-08:-44:-04 **12** **A.** I believe so.

00:21:29 **13** **Q.** And at that time, the best of your knowledge, Mr. Amawi

-08:-44:-04 **14** didn't even know Mr. El-Hindi, did he?

-08:-44:-04 **15** **A.** Not to my knowledge.

00:21:36 **16** **Q.** At that time in June, 2004 when Mr. Amawi made this

-08:-44:-04 **17** statement that you're talking about, to your knowledge, Mr.

00:21:44 **18** Amawi did not own a firearm, did he?

00:21:47 **19** **A.** Not to my knowledge.

00:21:48 **20** **Q.** To your knowledge Mr. Amawi did not have any type of

-08:-44:-04 **21** materials or bomb making materials, did he?

00:21:57 **22** **A.** Not to my knowledge.

-08:-44:-04 **23** **Q.** To your knowledge, Mr. Amawi was not engaged in training

00:22:03 **24** of tactics or firearms or any type of fighting with any other

-08:-44:-04 **25** individual yourself, was he?

-08:-44:-04 **1** A. Not to my knowledge.

00:22:17 **2** Q. In fact to your knowledge Mr. Amawi was not currently

00:22:20 **3** engaged in June of 2004 in any type of criminal activity that

-08:-44:-04 **4** you were aware of?

00:22:27 **5** A. None that I was aware of.

00:22:29 **6** Q. Now, what made Mr. Amawi come into your free view or

00:22:36 **7** interest was the statement that he made that you've mentioned

-08:-44:-04 **8** here a few times, correct?

00:22:41 **9** A. Somewhat. He was around people of interest also.

00:22:46 **10** Q. But those persons of interest, you're talking about the

-08:-44:-04 **11** approximate 20?

-08:-44:-04 **12** A. Correct.

00:22:52 **13** Q. Of those persons of interest that he was around, neither

-08:-44:-04 **14** of those two persons of interest were Mr. El-Hindi or Mr.

-08:-44:-04 **15** Mazloun, were they?

-08:-44:-04 **16** A. No, they were not.

00:23:04 **17** Q. Now, this statement that Mr. Amawi made was to the

-08:-44:-04 **18** effect you overheard him say that when he was in Jordan that he

00:23:13 **19** attempted to go over into Iraq, correct?

00:23:16 **20** A. And perform Jihad.

-08:-44:-04 **21** Q. And perform Jihad, correct?

-08:-44:-04 **22** A. Correct.

-08:-44:-04 **23** Q. And his family stopped him from going, in effect,

-08:-44:-04 **24** correct?

00:23:27 **25** A. That's the story he told me, yes.

00:23:30 **1** Q. Now, that statement alone caused you to begin to pursue

-08:-44:-04 **2** Mr. Amawi and to record him, correct?

00:23:42 **3** A. That is not correct. The only thing I did was inform

-08:-44:-04 **4** the FBI. Once again, I'm an information gatherer.

00:23:50 **5** Q. And that statement that you heard was in June of 2004,

-08:-44:-04 **6** correct?

00:23:55 **7** A. I believe so.

00:23:56 **8** Q. And then the first tape that you -- that was played for

-08:-44:-04 **9** the ladies and gentlemen of the jury was in June of 2004,

00:24:03 **10** correct?

00:24:04 **11** A. I cannot recall.

-08:-44:-04 **12** Q. Why don't you take a look at your guide?

00:24:11 **13** A. Even looking at. This is only part of it, so I would

00:24:16 **14** have to look at all of the -- or if you could show me something.

00:24:23 **15** This does not necessarily reflect the first time they recorded

-08:-44:-04 **16** Mr. Amawi.

-08:-44:-04 **17** Q. My question, Mr. Griffin, was the first tape that the

-08:-44:-04 **18** jury heard. And I believe that that tape is reflected on the

-08:-44:-04 **19** reference guide that would be on the first page and would be the

00:24:42 **20** fourth line down, 6432 at 2004.

-08:-44:-04 **21** A. I stand corrected. Yes.

-08:-44:-04 **22** Q. So the first tape the jury heard was the same month as

-08:-44:-04 **23** which you overheard this statement Mr. Amawi made?

00:25:02 **24** A. Correct.

-08:-44:-04 **25** Q. In that tape, that statement about his family stopping

- 00:25:07 **1** him from going to do Jihad, you then began the process of taping
- 08:-44:-04 **2** Mr. Amawi over the course of significant time, correct?
- 08:-44:-04 **3** **A.** Correct.
- 00:25:17 **4** **Q.** You also took Mr. Amawi basically shooting on three
- 08:-44:-04 **5** different occasions at Cleland's; is that correct?
- 00:25:26 **6** **A.** Correct.
- 00:25:29 **7** **Q.** And when you have the discussions with Mr. Amawi, and he
- 08:-44:-04 **8** made radical and brazen statements when you would be taping him,
- 00:25:41 **9** correct?
- 08:-44:-04 **10** **A.** Not all the time.
- 08:-44:-04 **11** **Q.** But he did make them?
- 08:-44:-04 **12** **A.** Say again.
- 08:-44:-04 **13** **Q.** He did make them?
- 00:25:47 **14** **A.** He made statements, yes.
- 00:25:49 **15** **Q.** But not all the time?
- 08:-44:-04 **16** **A.** Correct.
- 00:25:55 **17** **Q.** Over this period you began taping in June of 2004 up
- 00:26:00 **18** until the point that you went to Jordan with Mr. Amawi in around
- 08:-44:-04 **19** August 22, of 2005, correct?
- 00:26:08 **20** **A.** Correct.
- 08:-44:-04 **21** **Q.** Now, again, the real, would you agree, driving force
- 08:-44:-04 **22** that brought Mr. Amawi, the beginning of this process, into this
- 08:-44:-04 **23** was that statement that you referred to?
- 00:26:23 **24** **MR. SOFER:** Objection.
- 00:26:24 **25** **THE COURT:** Overruled.

00:26:27 **1** A. I can't tell you what the driving force is. Once
00:26:30 **2** again, I don't determine who I gather information on. I just
00:26:35 **3** gather information.
-08:-44:-04 **4** BY MR. IVEY:
-08:-44:-04 **5** Q. Well, you gathered the information, the statement; you
00:26:40 **6** reported it to the FBI?
00:26:42 **7** A. Yes.
-08:-44:-04 **8** Q. In June of 2004, correct?
-08:-44:-04 **9** A. Right.
00:26:45 **10** Q. Then in June of 2004 you're taping?
00:26:47 **11** A. Correct.
00:26:48 **12** Q. So shortly thereafter the statement, the taping began,
-08:-44:-04 **13** correct?
00:26:53 **14** A. Yes, they told me to tape these.
00:26:56 **15** Q. And that was in response to your reporting what the
00:26:59 **16** statement was?
00:27:00 **17** A. I can't tell you if that's the only thing.
-08:-44:-04 **18** Q. But you were the contact person with Mr. Amawi, correct?
00:27:08 **19** A. Yes.
00:27:10 **20** Q. There was no other operative taping Mr. Amawi but you,
00:27:14 **21** correct?
-08:-44:-04 **22** MR. SOFER: Objection Your Honor.
-08:-44:-04 **23** THE COURT: He can answer to his knowledge.
00:27:19 **24** BY MR. IVEY:
00:27:19 **25** Q. To your knowledge.

-08:-44:-04 **1** A. I have no clue. I have no way of knowing.

-08:-44:-04 **2** Q. And in that statement Mr. Amawi again indicated that it
-08:-44:-04 **3** was his family that stopped him from going over to Iraq,
-08:-44:-04 **4** correct?

00:27:31 **5** A. With the initial Imam, yes.

-08:-44:-04 **6** THE COURT: I'm going to ask Mr. Griffin, would you
00:27:41 **7** just answer the question to the extent you can yes or no. If
-08:-44:-04 **8** you can't answer it yes or no. Say I can't answer it yes or
-08:-44:-04 **9** no. Mr. Ivey will rephrase. You'll have ample opportunity
-08:-44:-04 **10** for elaboration.

00:27:53 **11** THE WITNESS: Yes, Your Honor.

-08:-44:-04 **12** THE COURT: Go ahead, Mr. Ivey.

00:27:56 **13** BY MR. IVEY:

00:27:56 **14** Q. Eventually this led to almost a year and a half to two
-08:-44:-04 **15** years later in an August 22 trip to Jordan, correct?

-08:-44:-04 **16** A. Correct.

-08:-44:-04 **17** Q. You went with Mr. Amawi on that trip to Jordan?

-08:-44:-04 **18** A. Yes.

-08:-44:-04 **19** Q. When you got to Jordan, you were not met at the airport
00:28:15 **20** by a Syrian contact, were you?

00:28:19 **21** A. We were not.

-08:-44:-04 **22** Q. You were not met at the airport by anyone from the Iraqi
00:28:29 **23** insurgency were you?

00:28:30 **24** A. Not that I know of.

-08:-44:-04 **25** Q. You were met at the airport by three of Mr. Amawi's

- 08:-44:-04 **1** family members, were you not?
- 00:28:36 **2** A. Correct.
- 08:-44:-04 **3** Q. You were met by two of his brothers?
- 00:28:40 **4** A. Correct.
- 00:28:41 **5** Q. And you were met by his mother?
- 00:28:43 **6** A. Correct.
- 00:28:44 **7** Q. They picked you up in the family vehicle, the Jeep
- 00:28:48 **8** Cherokee, correct?
- 00:28:49 **9** A. Yes.
- 00:28:51 **10** Q. When you were taken from the airport, you did not go and
- 08:-44:-04 **11** stay and live with any Syrian contact, did you?
- 00:29:02 **12** A. Excuse me, when I was taping?
- 08:-44:-04 **13** Q. You did not live with a Syrian contact when you were in
- 00:29:07 **14** Jordan with Mr. Amawi, did you?
- 08:-44:-04 **15** A. No.
- 08:-44:-04 **16** Q. You did not cross over the border into Iraq and stay in
- 08:-44:-04 **17** any insurgency camp or compound, did you?
- 08:-44:-04 **18** A. No.
- 08:-44:-04 **19** Q. You stayed at Mr. Amawi's family's house, didn't you?
- 08:-44:-04 **20** A. Correct.
- 00:29:22 **21** Q. Mr. Amawi considered you a friend, did he not, in your
- 08:-44:-04 **22** opinion?
- 00:29:29 **23** A. Yes.
- 00:29:31 **24** Q. You were picked up at the airport by Mr. Amawi's family
- 08:-44:-04 **25** and stayed in Mr. Amawi's family's home, correct?

00:29:39 **1** A. In the -- yes.

-08:-44:-04 **2** Q. And that is the same family that talked Mr. Amawi out of

-08:-44:-04 **3** going to Iraq, correct?

00:29:48 **4** A. As far as I know, yes.

-08:-44:-04 **5** Q. And also when you were in Jordan, Mr. Amawi discussed

00:29:55 **6** and I believe he introduced you to an Imam, correct?

00:30:00 **7** A. Several.

00:30:04 **8** Q. Pardon me?

-08:-44:-04 **9** A. Several.

-08:-44:-04 **10** Q. And he specifically introduced you to an Imam that

-08:-44:-04 **11** assisted his family in talking him out of going to Iraq,

-08:-44:-04 **12** correct?

-08:-44:-04 **13** A. Actually, that's incorrect. That's incorrect. I

-08:-44:-04 **14** never met that Imam.

00:30:20 **15** Q. Mr. Amawi discussed that, did he not?

-08:-44:-04 **16** A. He did.

-08:-44:-04 **17** Q. So when you go to Jordan after all this taping and after

-08:-44:-04 **18** all this training and after all this -- these comments, you end

00:30:31 **19** up with Mr. Amawi in his family's circle, correct?

-08:-44:-04 **20** A. Correct.

00:30:39 **21** Q. And you never meet or talk to any Syrian contact or any

00:30:47 **22** Iraqi insurgency, do you?

-08:-44:-04 **23** A. Not that I know of.

-08:-44:-04 **24** Q. In fact the purpose of you going over there, as you

-08:-44:-04 **25** testified to, was not even to go into Iraq and do anything, was

- 08:-44:-04 **1** it?
- 08:-44:-04 **2** A. Correct.
- 08:-44:-04 **3** Q. The purpose of going over there was not to go raise a
- 00:31:04 **4** violent Jihad, you or Mr. Amawi, was it?
- 08:-44:-04 **5** A. Correct.
- 08:-44:-04 **6** Q. And you didn't do that, did you?
- 08:-44:-04 **7** A. We did not.
- 08:-44:-04 **8** Q. Your purpose was to go deliver laptop computers,
- 08:-44:-04 **9** correct?
- 08:-44:-04 **10** A. Yes.
- 08:-44:-04 **11** Q. To a Syrian contact, correct?
- 08:-44:-04 **12** A. Correct.
- 08:-44:-04 **13** Q. But you didn't do that either, did you?
- 08:-44:-04 **14** A. We did not.
- 00:31:27 **15** Q. I'd like talk to about the association between the
- 08:-44:-04 **16** defendants in this case of Mr. Amawi. Again, at the beginning
- 08:-44:-04 **17** when you first started or were instructed to look at Mr. Amawi,
- 00:31:42 **18** begin taping him, Mr. Amawi did not know Mr. El-Hindi, did he,
- 08:-44:-04 **19** as far as you know?
- 08:-44:-04 **20** A. As far as I knew.
- 08:-44:-04 **21** Q. In fact, you didn't mention Mr. El-Hindi to Mr. Amawi
- 00:31:53 **22** until about January the 10th or so of 2005, around that time
- 08:-44:-04 **23** period?
- 00:31:58 **24** A. I'd be guessing.
- 08:-44:-04 **25** THE COURT: I couldn't hear you.

00:32:03 **1** THE DEFENDANT: I'd be guessing. I can't recall.

00:32:10 **2** BY MR. IVEY:

00:32:10 **3** Q. Let's see what you testified to on direct.

00:32:14 **4** THE COURT: If the record showed that was the

-08:-44:-04 **5** approximate date, would you have reason to dispute it?

00:32:22 **6** THE WITNESS: No.

00:32:23 **7** BY MR. IVEY:

00:32:23 **8** Q. You have no reason to dispute that?

00:32:25 **9** A. No, if that's what the record shows.

-08:-44:-04 **10** Q. And that was some six months after you began that -- the

00:32:31 **11** first tape the jury heard on Mr. Amawi in June of 2004, correct?

-08:-44:-04 **12** A. Correct.

00:32:37 **13** Q. Now, you learned of Zubair and Khaleel through

-08:-44:-04 **14** Mr. El-Hindi; did you not?

-08:-44:-04 **15** A. Correct.

-08:-44:-04 **16** Q. And you didn't hear anything about Zubair and Khaleel in

-08:-44:-04 **17** June of 2004, around that time frame, from Mr. Amawi, did you?

-08:-44:-04 **18** A. Not from Mr. Amawi.

00:32:55 **19** Q. You didn't hear about them from Mr. Mazloun either, did

-08:-44:-04 **20** you?

-08:-44:-04 **21** A. I did not.

-08:-44:-04 **22** Q. In fact, at that particular time you had not even met

-08:-44:-04 **23** Mr. Mazloun, correct?

-08:-44:-04 **24** A. Correct.

00:33:06 **25** Q. Now, you met Mr. Zubair and Mr. Khaleel at an Islamic

- 00:33:16 **1** conference in Cleveland, Ohio, around the Fourth of July, 2004,
- 08:-44:-04 **2** correct?
- 08:-44:-04 **3** A. Correct.
- 00:33:21 **4** Q. Mr. Amawi was not at that conference, was he?
- 08:-44:-04 **5** A. He was not.
- 00:33:27 **6** Q. And Mr. Mazloun was not at that conference, was he?
- 00:33:30 **7** A. Not that I know of.
- 00:33:35 **8** Q. From that time to today, as far as your whole experience
- 08:-44:-04 **9** in this, Mr. Amawi never stood in the same room with Mr. Zubair
- 00:33:45 **10** and Mr. Khaleel, did he?
- 08:-44:-04 **11** A. Not to my knowledge.
- 00:33:48 **12** Q. So the only association Mr. Amawi has with Mr. Zubair
- 00:33:54 **13** and Mr. Khaleel is the fact that the government put their photos
- 08:-44:-04 **14** on the same board; is that correct?
- 00:34:00 **15** A. Yes.
- 00:34:03 **16** Q. Zubair and Khaleel, you never saw them at Mr. Amawi's
- 00:34:07 **17** apartment, did you?
- 08:-44:-04 **18** A. I did not.
- 08:-44:-04 **19** Q. You never heard Mr. Amawi talking to them on the phone,
- 08:-44:-04 **20** did you?
- 00:34:13 **21** A. No, I haven't.
- 08:-44:-04 **22** Q. You never took Zubair and Khaleel shooting with Mr.
- 08:-44:-04 **23** Amawi, did you?
- 08:-44:-04 **24** A. I did not.
- 00:34:21 **25** Q. In around April 4, 2005, you went to see an accountant

00:34:30 **1** with Mr. El-Hindi, a Jihad Dahabi in Michigan, correct?

00:34:37 **2** **A.** Correct.

-08:-44:-04 **3** **Q.** That video was played for the ladies and gentlemen of

-08:-44:-04 **4** the jury, correct?

00:34:43 **5** **A.** Yes.

-08:-44:-04 **6** **Q.** When you went up to Michigan to meet this accountant

-08:-44:-04 **7** with Mr. El-Hindi, the purpose of that was to develop a -- an

00:34:54 **8** organization, a corporation, correct, or to apply for a grant?

-08:-44:-04 **9** **A.** Yes, one of the reasons.

-08:-44:-04 **10** **Q.** When you went to Michigan with Mr. El-Hindi, Mr. Amawi

-08:-44:-04 **11** did not go, did he?

-08:-44:-04 **12** **A.** He did not.

-08:-44:-04 **13** **Q.** And Mr. Mazloun did not go, did he?

-08:-44:-04 **14** **A.** He did not.

00:35:14 **15** **Q.** Now, Mr. Mazloun, Mr. Amawi did know him, correct?

-08:-44:-04 **16** THE COURT: I couldn't hear you.

00:35:23 **17** BY MR. IVEY:

00:35:23 **18** **Q.** Mr. Amawi did know Mr. Mazloun, correct?

00:35:27 **19** **A.** As far as I knew.

-08:-44:-04 **20** **Q.** As far as you knew?

-08:-44:-04 **21** **A.** Yes.

-08:-44:-04 **22** **Q.** But initially when you first began looking at Mr. Amawi,

00:35:37 **23** as far as you knew, again, Mr. Mazloun and Mr. Amawi were not

-08:-44:-04 **24** involved together in any type of criminal activity?

00:35:44 **25** **A.** Not to my knowledge.

-08:-44:-04 **1** Q. And to your knowledge, they had not been being trained

-08:-44:-04 **2** by anybody, correct?

-08:-44:-04 **3** A. Not to my knowledge.

-08:-44:-04 **4** Q. And to your knowledge, neither one of them had obtained
-08:-44:-04 **5** or attempted to obtain any type of explosive material or guns
-08:-44:-04 **6** together, did they?

-08:-44:-04 **7** A. Not to my knowledge.

00:36:03 **8** Q. Now, Mr. Mazloun did look at videos with you and Mr.

-08:-44:-04 **9** Amawi and in Mr. Amawi's apartment in the middle of November of
-08:-44:-04 **10** 2004, correct?

00:36:21 **11** A. Correct.

00:36:23 **12** Q. But also in November of 2004, Mr. Amawi was being
00:36:29 **13** evicted from his apartment, correct?

00:36:33 **14** A. If that's what the record shows or I testified to it,
-08:-44:-04 **15** then yes.

00:36:37 **16** Q. You don't have any reason to dispute that?

00:36:40 **17** A. If it's in the record, no.

00:36:43 **18** Q. And you paid Mr. Amawi 800 or so dollars to help prevent
-08:-44:-04 **19** him from being evicted, correct?

00:36:51 **20** A. Correct.

00:36:52 **21** Q. Mr. Mazloun did not pay that money, did he?

00:36:56 **22** A. No.

-08:-44:-04 **23** Q. And Mr. El-Hindi didn't pay that money, did he?

00:37:00 **24** A. No.

00:37:03 **25** Q. Now, Mr. Mazloun and Mr. Amawi shot guns under your

- 08:-44:-04 **1** training at Cleland's on two occasions, correct?
- 08:-44:-04 **2** A. Correct.
- 00:37:17 **3** Q. That would have been in the latter part of April, 2005?
- 00:37:22 **4** A. Correct.
- 00:37:24 **5** Q. Mr. Amawi shot also one time in January of 2005?
- 00:37:29 **6** A. Yes.
- 00:37:30 **7** Q. But when Mr. Amawi shot at Cleland's at that particular
- 00:37:35 **8** time, Mr. Mazloun was not present, was he?
- 08:-44:-04 **9** A. Not that I know of.
- 08:-44:-04 **10** Q. And, in fact, Mr. El-Hindi never shot with Mr. Amawi,
- 08:-44:-04 **11** did he?
- 00:37:43 **12** A. Not while I was present.
- 00:37:48 **13** Q. Now, in fact, really the only time in this whole
- 00:37:58 **14** approximate two-year period you investigated these three
- 08:-44:-04 **15** gentlemen, they were only all together on one occasion; is that
- 00:38:07 **16** correct, as far as you knew?
- 00:38:10 **17** A. In my presence.
- 00:38:11 **18** Q. "Yes"?
- 08:-44:-04 **19** A. Yes.
- 08:-44:-04 **20** Q. That would have been on February 16 of 2005?
- 00:38:17 **21** A. Correct.
- 00:38:18 **22** Q. Now, the government gave you a laptop computer to use in
- 08:-44:-04 **23** your investigation in this case, correct?
- 00:38:26 **24** A. Correct.
- 00:38:27 **25** Q. And at the time that they gave it to you, you were not

- 08:-44:-04 **1** proficient in the use of a computer?
- 00:38:36 **2** **A.** Depends on your definition of proficient.
- 08:-44:-04 **3** **Q.** I'll use yours. You said you could carry it and you
- 08:-44:-04 **4** could e-mail and do a Word document, but that was about it at
- 08:-44:-04 **5** the time?
- 00:38:46 **6** **A.** Yes. That would accurately reflect that.
- 00:38:49 **7** **Q.** Okay. But you could e-mail?
- 00:38:51 **8** **A.** I could e-mail, yes.
- 08:-44:-04 **9** **Q.** Now, Mr. Amawi, throughout this investigation, he
- 00:39:00 **10** definitely had a computer, didn't he?
- 08:-44:-04 **11** **A.** Yes.
- 00:39:03 **12** **Q.** And Mr. Amawi was very proficient in the use of that
- 00:39:07 **13** computer, was he not?
- 00:39:09 **14** **A.** I would say so.
- 00:39:10 **15** **Q.** And Mr. Amawi, would you agree with me, that the
- 00:39:15 **16** computer is his primary form of communication; that's the
- 00:39:22 **17** primary vehicle he used?
- 00:39:25 **18** **A.** If you're asking me is he on the computer a lot, I would
- 08:-44:-04 **19** say yes.
- 08:-44:-04 **20** **Q.** He's on PalTalk a lot?
- 08:-44:-04 **21** **A.** Correct.
- 00:39:34 **22** **Q.** He chairs chat rooms?
- 00:39:36 **23** **A.** Yes.
- 00:39:38 **24** **Q.** That's where he looked at the videos that the ladies and
- 00:39:42 **25** gentlemen of the jury were looking at?

00:39:43 **1** A. While I was present, yes.

00:39:47 **2** Q. And he definitely has e-mail capability, correct?

-08:-44:-04 **3** A. Yes.

-08:-44:-04 **4** Q. Mr. El-Hindi had a computer as well, correct?

-08:-44:-04 **5** A. Yes.

-08:-44:-04 **6** Q. And he -- I believe you testified to various things that

00:40:02 **7** he did on the computer in your presence?

-08:-44:-04 **8** A. Correct.

00:40:06 **9** Q. But I noticed that you did not, through your testimony,

-08:-44:-04 **10** bring up or present any e-mails between Mr. Amawi, Mr. El-Hindi,

00:40:20 **11** or Mr. Mazloun. Did you obtain, were you CCed on, included on

00:40:28 **12** any e-mail list of any e-mails between these three gentlemen in

-08:-44:-04 **13** the two-year period?

-08:-44:-04 **14** A. I only received very few, so...

00:40:38 **15** Q. Well, these individuals are, as you are aware, of

-08:-44:-04 **16** course, accused of being in association with each other,

00:40:48 **17** correct?

-08:-44:-04 **18** A. Yes.

00:40:49 **19** Q. But yet and still, you do not have any e-mails between

-08:-44:-04 **20** these computer users where they're discussing doing violent

00:41:04 **21** Jihad, providing material support to any terrorist organization

-08:-44:-04 **22** or any other nefarious conduct, do you?

00:41:14 **23** A. No. May I explain?

00:41:16 **24** Q. When Mr. Sofer questions you, of course.

00:41:20 **25** Now, when you went to Jordan in August of 2005 and

00:41:34 **1** returned again in December of 2005, Mr. El-Hindi did not go with
00:41:38 **2** you?

-08:-44:-04 **3** A. He did not.

-08:-44:-04 **4** Q. And Mr. Mazloun did not go with you?

-08:-44:-04 **5** A. He did not.

00:41:43 **6** Q. And while you were in Jordan, of course, obviously, Mr.

-08:-44:-04 **7** Amawi's family resides in Jordan, correct?

-08:-44:-04 **8** A. Correct.

-08:-44:-04 **9** Q. And Mr. El-Hindi had a brother in Jordan, correct?

-08:-44:-04 **10** A. Yes.

00:42:03 **11** Q. At this particular time, it is your belief that these

00:42:11 **12** gentlemen at that point were in some form of collusion with each

-08:-44:-04 **13** other, correct?

00:42:16 **14** A. Mr. Amawi and Mr. El-Hindi?

00:42:19 **15** Q. Mr. El-Hindi and Mr. Mazloun.

00:42:21 **16** A. They were friends, yes.

00:42:23 **17** Q. Well?

-08:-44:-04 **18** MR. HARTMAN: I didn't hear the answer.

-08:-44:-04 **19** BY MR. IVEY:

-08:-44:-04 **20** Q. They were friends?

-08:-44:-04 **21** A. I believe they were friends, yes.

-08:-44:-04 **22** Q. But you do not believe they were in collusion of any

-08:-44:-04 **23** type to do anything illegal?

00:42:35 **24** A. Once again, I don't -- the definition, you know, I just

-08:-44:-04 **25** gather information. They were doing things together at this

-08:-44:-04 **1** point. If that's what you are asking, then yes.

-08:-44:-04 **2** **Q.** Well, when you're over in Jordan, Mr. El-Hindi asked you
00:42:52 **3** to contact his brother, correct?

-08:-44:-04 **4** **A.** Correct.

00:42:55 **5** **Q.** He didn't ask Mr. Amawi to contact his brother, did he?

-08:-44:-04 **6** **A.** Correct.

00:43:00 **7** **Q.** He gave you the money to give to his brother, the \$500,
-08:-44:-04 **8** correct?

-08:-44:-04 **9** **A.** He did.

-08:-44:-04 **10** **Q.** Mr. Amawi didn't give the brother the money, you gave
00:43:11 **11** the brother the money, correct?

-08:-44:-04 **12** **A.** Correct.

00:43:15 **13** **Q.** And I believe you testified you contacted Mr. El-Hindi's
-08:-44:-04 **14** brother and met up with him, correct?

-08:-44:-04 **15** **A.** Yes.

00:43:28 **16** **Q.** Now, the ladies and gentlemen of the jury saw a series
00:43:44 **17** of videos that you looked at with Mr. Amawi, correct?

-08:-44:-04 **18** **A.** Correct.

00:43:51 **19** **Q.** Now, you watched a series of videos on October 14 of
00:43:58 **20** 2004, correct?

00:44:01 **21** **A.** If that's what the record reflects, yes.

00:44:05 **22** **Q.** Well, why don't you refer to your guide. I realize,

00:44:13 **23** Mr. Griffin, we haven't been in court for a week, but it seems

-08:-44:-04 **24** that when Mr. Sofer asked you these dates, you said correct.

-08:-44:-04 **25** When I ask you them you say you're not sure or, "if that's what

-08:-44:-04 **1** the record reflects."

-08:-44:-04 **2** MR. SOFER: Objection. That's not a question,

-08:-44:-04 **3** Judge.

-08:-44:-04 **4** THE COURT: I tend to agree. The jury will

-08:-44:-04 **5** disregard that. That's something you can call to their

00:44:34 **6** attention if you wish during closing.

00:44:39 **7** A. You would be correct.

00:44:41 **8** THE COURT: Correct as to that particular date?

00:44:44 **9** THE WITNESS: Watching videos, yes, Your Honor.

00:44:48 **10** BY MR. IVEY:

00:44:48 **11** Q. Now, on October 14, 2004, you watched a series of videos

-08:-44:-04 **12** at Mr. Amawi's apartment, correct?

-08:-44:-04 **13** A. Correct.

00:45:00 **14** Q. You watched them in -- that's his home, right?

00:45:06 **15** A. Yes. As far as I know.

-08:-44:-04 **16** Q. And you watched them in his bedroom?

-08:-44:-04 **17** A. Correct.

00:45:11 **18** Q. On his computer?

-08:-44:-04 **19** A. Correct.

00:45:15 **20** Q. And nobody else was present, were they?

-08:-44:-04 **21** A. Not that I know of.

00:45:21 **22** Q. When you watched the videos, nobody else was with you?

00:45:24 **23** A. No.

-08:-44:-04 **24** Q. Mr. Amawi had not invited over individuals from the

00:45:29 **25** Mosque and asked them to watch these videos with me and Mr.

00:45:34 **1** Griffin, let's go do this, let's go kill American soldiers, did
-08:-44:-04 **2** he?
00:45:39 **3** A. None that I know of.
00:45:41 **4** Q. He just watched them with you?
00:45:43 **5** A. Correct.
00:45:45 **6** Q. And you presented yourself as someone who was
00:45:51 **7** disenchanted with the United States, correct?
00:45:54 **8** A. Islamic extremist, yes.
-08:-44:-04 **9** Q. That's how you define Islamic extremists, correct?
-08:-44:-04 **10** A. Part of it.
00:46:05 **11** Q. And you were a convert to Islam?
00:46:09 **12** A. Yes.
00:46:15 **13** Q. Someone who is disenchanted with the United States and
-08:-44:-04 **14** someone who is a convert to Islam may find these videos of
00:46:26 **15** interest?
00:46:29 **16** A. I can't say. That was my cover, anyway.
-08:-44:-04 **17** Q. You certainly showed an interest in your cover showing
-08:-44:-04 **18** these videos, correct?
00:46:40 **19** A. Aspects of it, yes.
-08:-44:-04 **20** Q. I mean, you made comments that we heard over the course
-08:-44:-04 **21** of several weeks of enjoyment of these videos, agreement with
-08:-44:-04 **22** these videos?
-08:-44:-04 **23** A. Once again, that is the cover.
00:46:55 **24** Q. Well, I understand it's a cover, but Mr. Amawi didn't
-08:-44:-04 **25** know you were undercover, correct?

-08:-44:-04 **1** A. Correct.

-08:-44:-04 **2** Q. You didn't tell him that, did you?

-08:-44:-04 **3** A. No.

-08:-44:-04 **4** Q. So you posed as a person who may find these videos of
00:47:08 **5** interest?

-08:-44:-04 **6** A. Correct.

-08:-44:-04 **7** Q. And again, you looked at them -- Mr. Amawi's looking at
00:47:13 **8** them in the privacy of his home?

00:47:15 **9** A. Correct.

00:47:16 **10** Q. In his bedroom?

00:47:18 **11** A. Yes.

-08:-44:-04 **12** Q. On his computer, correct?

-08:-44:-04 **13** A. Correct.

00:47:23 **14** Q. All right. Let's take a look at some of these videos,
-08:-44:-04 **15** a few snippets of it the government played. Let's do Exhibit
-08:-44:-04 **16** 14.

00:47:45 **17** MR. WITMER-RICH: For the record, all of these
00:47:49 **18** videos are Government's Exhibits that were played during the
-08:-44:-04 **19** direct.

00:47:54 **20** THE COURT: Okay.

00:47:56 **21** MR. SOFER: Your Honor, if we could just have the
-08:-44:-04 **22** exhibit number as we go through these.

00:48:02 **23** MR. IVEY: It's Government's Exhibit 14.

00:48:08 **24** THE COURT: Do we need the earphones?

00:48:11 **25** MR. IVEY: You may not.

00:48:21 **1** (Video is played.)

00:48:21 **2** BY MR. IVEY:

-08:-44:-04 **3** **Q.** Now on this video, the CNN exclusive is clear on the

-08:-44:-04 **4** video, isn't it?

00:49:01 **5** **A.** The words.

00:49:02 **6** **Q.** "Yes"?

00:49:03 **7** **A.** Yes.

-08:-44:-04 **8** **Q.** And from this video, you cannot learn tactics from this

-08:-44:-04 **9** video, can you?

00:49:13 **10** **A.** Actually, you can.

-08:-44:-04 **11** **Q.** Okay. Well, does this video show you how to load a

-08:-44:-04 **12** firearm?

00:49:20 **13** **A.** It does not.

-08:-44:-04 **14** **Q.** Does this video show you how to aim a firearm?

00:49:26 **15** **A.** It does not.

-08:-44:-04 **16** **Q.** Does this video show you how to shoot a firearm?

00:49:32 **17** **A.** I believe it does not.

-08:-44:-04 **18** **Q.** Does this video show you how to take a firearm apart,

-08:-44:-04 **19** strip it, put it back together?

-08:-44:-04 **20** **A.** It does not.

-08:-44:-04 **21** **Q.** Does this video show you how to make a bomb?

00:49:47 **22** **A.** It does not.

-08:-44:-04 **23** **Q.** The video does instruct you on how to get out of a car

-08:-44:-04 **24** and walk, correct?

00:49:56 **25** **A.** Being escorted, yes.

00:49:59 **1** Q. Let's continue with the next portion?

00:50:05 **2** THE COURT: That would be Exhibit?

00:50:10 **3** MR. IVEY: I believe it's a continuation of 14.

00:50:14 **4** MR. SOFER: If we could indicate what portions.

-08:-44:-04 **5** There's a time on them, Your Honor.

-08:-44:-04 **6** THE COURT: The first portion showed people

00:50:21 **7** walking, a cluster of people.

00:50:25 **8** MR. WITMER-RICH: For the record, it started 2

00:50:28 **9** minutes, 38 seconds and ended at approximately 3 minutes.

-08:-44:-04 **10** THE COURT: That's probably the better way.

00:50:35 **11** MR. WITMER-RICH: The second section is beginning

00:50:37 **12** at approximately 4 minutes and 13 seconds.

-08:-44:-04 **13** MR. SOFER: I think there was previously testimony

-08:-44:-04 **14** about who these people were but we'll rest for the record.

00:50:54 **15** (Video is shown.)

00:51:07 **16** BY MR. IVEY:

00:51:07 **17** Q. The gentleman in the middle is Osama Bin Laden?

-08:-44:-04 **18** A. I believe so.

00:51:12 **19** Q. That's who it appears to be?

-08:-44:-04 **20** A. Yes.

00:51:14 **21** Q. Now, that portion of the video does not train one how to

-08:-44:-04 **22** fight in combat, does it?

00:51:19 **23** A. It does not.

-08:-44:-04 **24** Q. That video does not train one how to make an explosive

00:51:26 **25** device, does it?

-08:-44:-04 **1** A. No.

00:51:29 **2** Q. You looked at another video. Let's look at Exhibit 15,

-08:-44:-04 **3** Government's Exhibit 15.

00:51:47 **4** (Video is shown.)

00:53:26 **5** BY MR. IVEY:

00:53:26 **6** Q. Now, Mr. Griffin, again, that video does not teach one

-08:-44:-04 **7** how to train and to use any weapon or make any type of explosive

00:53:37 **8** device, does it?

00:53:38 **9** A. I can't make out all the Arabic, but I have to believe

-08:-44:-04 **10** that.

00:53:43 **11** Q. You don't speak Arabic --

-08:-44:-04 **12** A. Not fluently.

-08:-44:-04 **13** Q. -- fluently?

00:53:47 **14** A. Correct.

-08:-44:-04 **15** Q. So as far as you're able to tell, that video does not

-08:-44:-04 **16** have any value for training purpose, does it?

00:53:56 **17** A. No.

00:53:59 **18** Q. And your understanding in working as an operative, it's

-08:-44:-04 **19** not against -- it's not illegal to look at these videos, it is?

00:54:10 **20** MR. SOFER: Objection as to relevance.

-08:-44:-04 **21** THE COURT: I would agree. Not to relevance but

-08:-44:-04 **22** in terms of his understanding of what may be illegal or not.

-08:-44:-04 **23** BY MR. IVEY:

00:54:20 **24** Q. What you looked at with Mr. Amawi, you informed the FBI

-08:-44:-04 **25** of what you were looking at, correct?

-08:-44:-04 **1** A. Correct.

-08:-44:-04 **2** Q. And, in fact, you gave them copies of it, correct?

00:54:30 **3** A. I didn't.

-08:-44:-04 **4** Q. Well, you would have it on disk and let them know what
-08:-44:-04 **5** he was looking at, the nature of the videos?

00:54:39 **6** A. I handed the disk over.

00:54:41 **7** Q. No, I'm asking: Due to the general nature of these

00:54:44 **8** videos, you informed the FBI of what you were looking at with

-08:-44:-04 **9** Mr. Amawi?

-08:-44:-04 **10** A. Yes.

-08:-44:-04 **11** Q. And after you informed the FBI that Mr. Amawi had looked

00:54:53 **12** at these videos with you in his home, in his bedroom, Mr. Amawi

-08:-44:-04 **13** was not subsequently arrested, was he?

-08:-44:-04 **14** MR. SOFER: Objection as to relevance.

-08:-44:-04 **15** THE COURT: Didn't hear the question.

-08:-44:-04 **16** BY MR. IVEY:

-08:-44:-04 **17** Q. Mr. Amawi was not arrested after you informed the FBI on

00:55:10 **18** October 4 that you looked at these videos with Mr. Amawi, was

-08:-44:-04 **19** he?

-08:-44:-04 **20** A. Not that I know of.

-08:-44:-04 **21** THE COURT: I'll let the answer stand. Let me

-08:-44:-04 **22** remind Mr. Griffin, when an objection has been interposed, take

00:55:26 **23** a bit of a pause and wait for a ruling.

-08:-44:-04 **24** THE WITNESS: Sorry, Your Honor.

-08:-44:-04 **25** THE COURT: No problem.

00:55:34 **1** MR. IVEY: Let's look at Government's Exhibit 18.

00:55:39 **2** (Video is shown.)

00:56:11 **3** MR. WITMER-RICH: For the record, we stopped the

00:56:13 **4** video at 30 seconds.

00:56:19 **5** BY MR. IVEY:

-08:-44:-04 **6** **Q.** Now, this video deals with the maker's suggestion of a

00:56:25 **7** possible government conspiracy behind the attack in New York on

00:56:30 **8** 9/11, correct?

00:56:31 **9** **A.** I believe so.

00:56:33 **10** **Q.** Now, the Iraqi war hadn't even begun at the time of

00:56:40 **11** 9/11, had it?

00:56:41 **12** **A.** No, it had not.

-08:-44:-04 **13** **Q.** And this video here doesn't train one how to fight, make

00:56:50 **14** weapons, explosive devices or shoot guns, does it?

-08:-44:-04 **15** **A.** I don't believe so.

00:56:58 **16** **Q.** Now, let's look at Government's Exhibit 19.

00:57:10 **17** (Video is shown.)

00:57:35 **18** BY MR. IVEY:

00:57:36 **19** **Q.** Now, that video, again, doesn't teach one how to shoot a

-08:-44:-04 **20** gun, does it?

-08:-44:-04 **21** **A.** No, it does not.

-08:-44:-04 **22** **Q.** It doesn't teach one how to make explosives, does it?

-08:-44:-04 **23** **A.** It doesn't.

00:57:53 **24** **Q.** And it shows an Iraqi on the ground getting shot, while

-08:-44:-04 **25** he's on the ground, by an American soldier, correct?

00:58:08 **1** A. I don't know who he was shot by.

-08:-44:-04 **2** Q. You don't?

00:58:11 **3** A. No.

00:58:12 **4** Q. You didn't hear that part of the video when it was

00:58:16 **5** indicated that the Iraqi person was shot by the American

-08:-44:-04 **6** soldier?

00:58:21 **7** A. Yes, but it -- we're taking another person's word for

-08:-44:-04 **8** it.

00:58:29 **9** Q. So you don't take the word for what's said in these

00:58:36 **10** videos?

-08:-44:-04 **11** A. Not necessarily.

00:58:38 **12** Q. Well, if a person that is from the Middle East sees a

00:58:46 **13** video like that in the privacy of their home, can you understand

-08:-44:-04 **14** how that might anger?

00:58:57 **15** A. I can't testify to what somebody -- what would anger

00:59:02 **16** somebody else.

00:59:03 **17** Q. Can you understand how that person in the privacy of

00:59:10 **18** their home who sees this might make some pretty inflammatory

-08:-44:-04 **19** comments about seeing something like that?

-08:-44:-04 **20** A. If I had to guess, possibly.

00:59:19 **21** Q. Okay. Now, you looked at videos again at Mr. Amawi's

00:59:31 **22** apartment on November 23 of 2004?

00:59:35 **23** A. Correct.

00:59:37 **24** Q. Okay. Let's look at Government's Exhibit 23. Let's

00:59:50 **25** look at Government's Exhibit 23.

00:59:52 **1** THE COURT: Before turning it on, for the record,
-08:-44:-04 **2** what was the length of that last video?
00:59:59 **3** MR. WITMER-RICH: The previous video we played the
-08:-44:-04 **4** entire Exhibit 19.
01:00:03 **5** THE COURT: Okay.
01:00:07 **6** (Video is shown.)
01:00:33 **7** BY MR. IVEY:
-08:-44:-04 **8** Q. Now, that video that we just looked at shows a depiction
-08:-44:-04 **9** of a car bomb going off when it runs into, I guess, a vehicle,
-08:-44:-04 **10** correct?
-08:-44:-04 **11** A. Correct.
-08:-44:-04 **12** Q. This video does not teach you how to make the car bomb,
-08:-44:-04 **13** does it?
-08:-44:-04 **14** A. Not how to make it, no.
-08:-44:-04 **15** Q. It doesn't teach you how to strap it to the vehicle,
01:00:56 **16** does it?
01:00:58 **17** A. It does not.
01:01:01 **18** Q. Let's take a look at Government's Exhibit 24.
01:01:08 **19** MR. WITMER-RICH: For the record, on Exhibit 23 we
-08:-44:-04 **20** played the first few seconds then played from 40 seconds to
-08:-44:-04 **21** about 50 seconds.
01:01:20 **22** (Video is shown.)
01:02:22 **23** BY MR. IVEY:
01:02:22 **24** Q. Now again, Mr. Griffin, this video does not instruct one
01:02:27 **25** how to make the explosive device that was -- that was detonated

- 08:-44:-04 **1** in this video, does it?
- 08:-44:-04 **2** **A.** Actually, it does.
- 08:-44:-04 **3** **Q.** It shows how to make it?
- 01:02:41 **4** **A.** The picture in the beginning with the det cord an d the
- 08:-44:-04 **5** actual bomb there, it's a picture.
- 01:02:46 **6** **Q.** Oh, I see.
- 08:-44:-04 **7** **A.** And to me it's instructing me.
- 01:02:51 **8** **Q.** Well, so that now -- can we run this back to the
- 01:02:58 **9** beginning?
- 08:-44:-04 **10** **A.** I'm sorry, maybe I misunderstood you.
- 08:-44:-04 **11** **Q.** Let's rerun it. That's what you're talking about?
- 08:-44:-04 **12** **A.** Yes, sir.
- 01:03:09 **13** **Q.** So this video was played during your direct testimony,
- 08:-44:-04 **14** correct?
- 01:03:14 **15** **A.** Yes.
- 01:03:17 **16** **Q.** And I just played it, obviously, right?
- 08:-44:-04 **17** **A.** Yes.
- 08:-44:-04 **18** **Q.** And I've run it back to this portion that you're
- 01:03:24 **19** indicating is instructive, correct?
- 08:-44:-04 **20** **A.** Yes.
- 08:-44:-04 **21** **Q.** So the ladies and gentlemen of the jury have now seen
- 01:03:29 **22** this three times, correct?
- 01:03:32 **23** **A.** I believe so.
- 01:03:33 **24** **Q.** So do you think that seeing this three times now that
- 08:-44:-04 **25** the jury is now capable of arming a bomb after looking at that?

-08:-44:-04 **1** A. I -- no other prior understanding, but, once again --

01:03:50 **2** Q. In your opinion this has instructive value on how to arm

01:03:53 **3** a bomb by just looking at this photo?

-08:-44:-04 **4** A. In my opinion, yes.

01:03:57 **5** Q. Now, Mr. Amawi looks at lot of video, didn't he?

-08:-44:-04 **6** A. In my presence, yes.

01:04:10 **7** Q. And Mr. Amawi had -- he was motivated to present

01:04:23 **8** information about what he felt was really going on about a lot

-08:-44:-04 **9** of topics, didn't he?

-08:-44:-04 **10** MR. SOFER: Objection, Your Honor.

-08:-44:-04 **11** THE COURT: I would tend to agree in terms of the

01:04:35 **12** word motivate. He can testify as to what he observed.

-08:-44:-04 **13** BY MR. IVEY:

-08:-44:-04 **14** Q. He looked at a lot of video about political positions,

01:04:46 **15** war positions, conspiracy theories, things of this nature,

-08:-44:-04 **16** correct?

-08:-44:-04 **17** A. I can only tell you what basically the three reasons why

-08:-44:-04 **18** we looked at the videos.

-08:-44:-04 **19** Q. Well, you looked at the -- we just saw the 9/11

-08:-44:-04 **20** conspiracy, correct?

-08:-44:-04 **21** A. Correct.

01:05:08 **22** Q. So let's take a look at Government's Exhibit 32.

-08:-44:-04 **23** Before we do that, I'm sorry, let me ask you this question.

01:05:24 **24** Mr. Amawi, when he was with you, did he use video

01:05:29 **25** tape a lot to support his position and views to you?

01:05:37 **1** A. Yes.

01:05:39 **2** Q. Let's look at Government's Exhibit 32. I'd ask you to

-08:-44:-04 **3** pay attention to the text because I'm going to ask you some

01:05:57 **4** questions.

01:06:16 **5** (Video is shown.)

01:07:01 **6** BY MR. IVEY:

01:07:01 **7** Q. This tape talks about a resistance struggle that -- or

-08:-44:-04 **8** future resistance struggles in the history of man, does it not?

-08:-44:-04 **9** Isn't that what he said?

-08:-44:-04 **10** A. Yes.

-08:-44:-04 **11** Q. Let's continue.

01:07:41 **12** (Video is shown.)

-08:-44:-04 **13** BY MR. IVEY:

-08:-44:-04 **14** Q. It indicates that they're appealing, that they're not

01:07:47 **15** responsible for the 9/11 attack, correct?

-08:-44:-04 **16** A. That was the general statement, correct.

01:07:52 **17** Q. Continue.

-08:-44:-04 **18** (Video is shown.)

01:08:36 **19** MR. IVEY: Keep going.

-08:-44:-04 **20** (Video is shown.)

01:08:44 **21** BY MR. IVEY:

01:08:44 **22** Q. They're indicating that we call on you again, we do not

01:08:51 **23** require arms or fighters for we have plenty?

01:08:55 **24** MR. SOFER: Judge, I'm going to object. The video

01:08:58 **25** sort of says what it says. Counsel doesn't have to keep

-08:-44:-04 **1** repeating it.

01:09:04 **2** MR. IVEY: Well, Your Honor, I asked him.

-08:-44:-04 **3** THE COURT: I will permit the question to stand.

-08:-44:-04 **4** BY MR. IVEY:

-08:-44:-04 **5** Q. That's what it said, "We do not require arms or fighters

01:09:12 **6** for we have plenty," correct?

-08:-44:-04 **7** A. Yes.

01:09:15 **8** Q. And Mr. Amawi, as you just indicated, would play videos

-08:-44:-04 **9** in support of his positions, wouldn't he?

01:09:23 **10** A. Yes.

01:09:29 **11** MR. IVEY: Continue on.

01:09:36 **12** (Video is shown.)

01:09:37 **13** MR. IVEY: Continue.

01:09:59 **14** (Video is shown.)

01:10:01 **15** BY MR. IVEY:

01:10:01 **16** Q. Now, Mr. Griffin, you would agree with me that this

01:10:06 **17** video is not a training video in terms of the tactics that you

01:10:10 **18** were able to teach?

01:10:13 **19** A. Once again, to me, in my opinion, looking at that video

-08:-44:-04 **20** they showed tactics and how ambushes are done.

-08:-44:-04 **21** Q. You feel -- it's your opinion that anyone that looks at

-08:-44:-04 **22** this video is going to know how to do an ambush in a military

01:10:31 **23** combat situation?

-08:-44:-04 **24** A. They'd get a general idea, yes.

01:10:35 **25** Q. Would you agree with me that the basic point of this

01:10:42 **1** video is to express a viewpoint about the war in Iraq?

01:10:49 **2** **A.** It's a viewpoint.

01:10:52 **3** **Q.** So, in other words, if you were -- are you saying to the

01:10:56 **4** ladies and gentlemen of the jury that if you were amassing a

01:11:00 **5** collection of training videos, you would include this video in

-08:-44:-04 **6** that collection?

01:11:07 **7** **A.** Me personally?

-08:-44:-04 **8** **Q.** Yes.

01:11:10 **9** **A.** Possibly.

-08:-44:-04 **10** **Q.** You would?

-08:-44:-04 **11** **A.** Possibly.

01:11:13 **12** **Q.** Okay.

01:11:22 **13** MR. IVEY: Let's look at Government's Exhibit --

01:11:25 **14** MR. WITMER-RICH: We played Exhibit 32 from the

01:11:28 **15** beginning through 2 minutes, 50 seconds.

01:11:35 **16** MR. IVEY: Let's look at Government's Exhibit 38.

01:11:41 **17** (Video is shown.)

01:14:24 **18** BY MR. IVEY:

-08:-44:-04 **19** **Q.** Now, would you agree with me, Mr. Griffin, that this is

-08:-44:-04 **20** not a training video on tactics, how to fight?

01:14:32 **21** **A.** I would agree.

01:14:34 **22** **Q.** And you looked at this video with Mr. Amawi in his

-08:-44:-04 **23** apartment with him, correct?

01:14:42 **24** **A.** Yes.

01:14:43 **25** **Q.** And Mr. El-Hindi was not present? And if you want to

-08:-44:-04 **1** look at your guide, look up July 27 on your guide.

-08:-44:-04 **2** **A.** What day?

-08:-44:-04 **3** **Q.** July 27 -- I'm sorry, I'm wrong. On January 10 of

01:15:01 **4** 2004.

01:15:03 **5** **A.** January 10 of 2005?

01:15:09 **6** MR. IVEY: '04.

01:15:13 **7** MR. WITMER-RICH: '05.

01:15:16 **8** **A.** No, it seems to be myself and Mr. El-Hindi -- excuse me,

01:15:20 **9** Mr. Amawi.

01:15:21 **10** BY MR. IVEY:

01:15:21 **11** **Q.** And you're in his home, correct?

-08:-44:-04 **12** **A.** Yes.

-08:-44:-04 **13** **Q.** Okay, looking at this in his bedroom on his computer,

01:15:30 **14** correct?

-08:-44:-04 **15** **A.** Correct.

01:15:31 **16** **Q.** And you can see how, I would hope -- how a person of the

-08:-44:-04 **17** Islamic or Muslim faith would take offense to a video like this?

-08:-44:-04 **18** MR. SOFER: Objection, Your Honor --

01:15:45 **19** THE COURT: I'll let him answer.

-08:-44:-04 **20** MR. SOFER: -- to the form of the question.

01:15:48 **21** THE COURT: I'll let him answer.

-08:-44:-04 **22** **A.** Once again, I can't testify to what somebody -- what

01:15:55 **23** somebody does and doesn't get mad at.

01:15:57 **24** BY MR. IVEY:

01:15:57 **25** **Q.** So when the religious leaders call Mohammad, the revered

01:16:07 **1** profit of Muslim, a terrorist, you cannot understand or

-08:-44:-04 **2** appreciate how a Muslim may take offense to that; is that what

-08:-44:-04 **3** you're saying?

01:16:16 **4** **A.** I'm saying if they said the same thing about Jesus

01:16:20 **5** Christ, are you asking me would I be the same way, would I be

01:16:27 **6** mad?

-08:-44:-04 **7** **Q.** I think you're trying to fight with me on something

01:16:30 **8** that's obvious, but I'll let you do it. When they say --

-08:-44:-04 **9** **A.** I'm trying to answer your question.

-08:-44:-04 **10** **Q.** When they say on this tape, "they ought to take every

-08:-44:-04 **11** Muslim student and ship them back where they came from," you are

-08:-44:-04 **12** incapable of understanding and appreciating how a Muslim would

01:16:45 **13** not appreciate that; is that what you're saying?

-08:-44:-04 **14** **MR. SOFER:** Objection once again; form of the

-08:-44:-04 **15** question.

01:16:51 **16** **THE COURT:** I'm going to sustain because I think

-08:-44:-04 **17** you're arguing. You may rephrase the question and continue.

01:16:57 **18** **BY MR. IVEY:**

01:16:57 **19** **Q.** If a Muslim took offense at Mohammad being called a

01:17:04 **20** terrorist and a pedophile, and if a Muslim took offense at

-08:-44:-04 **21** religious leaders in country saying they should pack up every

-08:-44:-04 **22** Muslim student and send them back where they came from, can you

-08:-44:-04 **23** appreciate a Muslim in their own home might make some pretty

01:17:24 **24** inflammatory and nasty comments?

01:17:26 **25** **MR. SOFER:** Same objection.

-08:-44:-04 **1** THE COURT: I'll let him answer.

-08:-44:-04 **2** A. Being offended is a choice.

01:17:37 **3** BY MR. IVEY:

01:17:37 **4** Q. You got all of the defendants together on February 16 of
01:17:48 **5** 2004, correct?

01:17:51 **6** A. 2005.

-08:-44:-04 **7** Q. 2005, I'm sorry. Correct?

01:17:55 **8** A. Correct.

01:17:57 **9** Q. And after that meeting, you looked at a series of videos
01:18:03 **10** again with Mr. Amawi in his apartment on July 27 of 2005,

-08:-44:-04 **11** correct? And if you want to check your guide you can check it.

-08:-44:-04 **12** MR. SOFER: Judge, I didn't understand the

-08:-44:-04 **13** question.

01:18:18 **14** MR. IVEY: I'm asking him did he view the videos

-08:-44:-04 **15** with Mr. Amawi in Mr. Amawi's apartment on July 27, 2005.

01:18:38 **16** A. Did you say July 27?

-08:-44:-04 **17** BY MR. IVEY:

-08:-44:-04 **18** Q. Yes.

01:18:40 **19** A. That is correct.

01:18:44 **20** Q. Let's play one of the videos that you looked at with Mr.

01:18:49 **21** Amawi in his apartment at his computer. Let's play -- and by

-08:-44:-04 **22** the way, on July 27, when you looked at these videos with Mr.

-08:-44:-04 **23** Amawi in his apartment, Mr. El-Hindi and Mr. Mazloun were not

-08:-44:-04 **24** present with you, correct?

01:19:05 **25** A. I don't believe so.

-08:-44:-04 **1** Q. Let's play Government's Exhibit 90.

-08:-44:-04 **2** THE COURT: Exhibit what?

01:19:15 **3** MR. IVEY: 90, nine-zero.

01:19:49 **4** (Video is shown.)

01:19:52 **5** BY MR. IVEY:

01:19:52 **6** Q. Now, let me guess, Mr. Griffin, you think that's a

01:19:56 **7** training video, don't you?

01:19:59 **8** A. It's an observation video.

-08:-44:-04 **9** Q. Observation, doesn't have training value in a meaningful

01:20:07 **10** sense?

-08:-44:-04 **11** A. I wouldn't say so.

-08:-44:-04 **12** Q. Let look at Government's Exhibit 109.

01:20:27 **13** (Video is shown.)

-08:-44:-04 **14** BY MR. IVEY:

-08:-44:-04 **15** Q. Same question. That has no real training value, does

01:20:34 **16** it?

-08:-44:-04 **17** A. I would have to disagree with you, Counsel.

-08:-44:-04 **18** Q. You think it has meaningful training value?

-08:-44:-04 **19** A. Yes, it's an example of an IED, me seeing the video

-08:-44:-04 **20** numerous times, I know what happens next.

-08:-44:-04 **21** Q. So do you think after seeing that clip that anyone who

01:20:54 **22** sees it is then able to make an IED?

01:20:57 **23** A. Make an IED?

-08:-44:-04 **24** Q. Yes.

01:21:01 **25** A. No.

-08:-44:-04 **1** Q. It doesn't have training value in terms of making an
01:21:05 **2** IED?

-08:-44:-04 **3** A. As far as making an IED, no.

-08:-44:-04 **4** Q. Let's look at Government's Exhibit 110.
01:21:16 **5** (Video is shown.)
01:21:26 **6** MR. WITMER-RICH: Starting the clip at one minute.
01:21:26 **7** (Video is shown.)
01:21:26 **8** BY MR. IVEY:

-08:-44:-04 **9** Q. Now, that video does not show how to shoot a sniper
01:21:48 **10** rifle, does it?

01:21:51 **11** A. The mechanics, no.

01:21:53 **12** Q. It doesn't show the mechanics of how to take apart a
-08:-44:-04 **13** sniper rifle, does it?

-08:-44:-04 **14** A. It does not.

01:22:01 **15** Q. In fact, we don't even know for certain if it was a
-08:-44:-04 **16** sniper rifle used, do we?

01:22:06 **17** A. No.

01:22:10 **18** MR. IVEY: Let's play Government's Exhibit 111.
-08:-44:-04 **19** MR. SOFER: Your Honor, one of the jurors is
-08:-44:-04 **20** raising his hand.

-08:-44:-04 **21** THE JUROR: Our screen, it looks like, doesn't have
-08:-44:-04 **22** as good of video as the other screen. This one.

-08:-44:-04 **23** THE JUROR: He did not see the sniper shot on the
01:22:29 **24** video. We didn't see nothing at all.

01:22:33 **25** MR. IVEY: Who all did not see it?

-08:-44:-04 **1** THE COURT: Has that been so for all the videos?

-08:-44:-04 **2** THE JUROR: No, just this one.

-08:-44:-04 **3** MR. IVEY: I think this is a pretty poor quality.

-08:-44:-04 **4** THE COURT: Were you able to see anything at all?

-08:-44:-04 **5** THE JUROR: No, just the blast.

-08:-44:-04 **6** THE JUROR: That's all it was.

01:22:52 **7** MR. SOFER: We brought this to the Court's

-08:-44:-04 **8** attention, on our screens and this screen back here, it's very

-08:-44:-04 **9** clear. For some reason this particular video on the screens

-08:-44:-04 **10** the jury has, and the one I have --

01:23:07 **11** THE COURT: I can make out what it is, but it looks

01:23:10 **12** fuzzy.

01:23:11 **13** MR. SOFER: We would have to either ask Your

-08:-44:-04 **14** Honor -- we can deal with this at a side bar.

01:23:17 **15** MR. IVEY: I'll withdraw this exhibit.

01:23:21 **16** THE COURT: Why? I'd like to have the person take

-08:-44:-04 **17** a look at it. Why don't we take about a 15-minute recess.

01:42:26 **18** (Recess taken.)

01:42:43 **19** THE COURT: What I propose to do is simply indicate

-08:-44:-04 **20** that video for whatever reason can't be displayed on those

-08:-44:-04 **21** monitors. I'd simply say to the jury the video, which was

-08:-44:-04 **22** fairly fuzzy --

-08:-44:-04 **23** MR. SOFER: We think, Judge, we may have

01:43:01 **24** jerry-rigged something that would allow the jury to see it.

01:43:06 **25** And I just want to have a quick discussion about one of my

01:43:11 **1** objections outside the presence of the jury so we don't have to
01:43:14 **2** do a sidebar, if that's acceptable to Your Honor, during the
01:43:17 **3** break here, so however you want to handle that. But I think,
-08:-44:-04 **4** again, if Defense Counsel doesn't object, we've been able to put
-08:-44:-04 **5** our monitor over there by the jury. It's small, but I think
01:43:30 **6** it's much better than what they were seeing.

-08:-44:-04 **7** And with respect to my objection, Your Honor, what
-08:-44:-04 **8** I've objected to, maybe this will be the end of it, but rather
-08:-44:-04 **9** than waste time in front of the jury I think the government has
-08:-44:-04 **10** an objection to the questions.

-08:-44:-04 **11** (Whereupon the following discussion was had at the
-08:-44:-04 **12** bench outside the hearing of the jury:)

-08:-44:-04 **13** MR. SOFER: The government's objection is a simple
-08:-44:-04 **14** one. I object to the series of questions which Counsel was
-08:-44:-04 **15** asking whether somebody, the witness could understand whether
-08:-44:-04 **16** somebody would be offended by something, what somebody else
-08:-44:-04 **17** would be thinking. It seems to me either these questions are
-08:-44:-04 **18** inappropriate because they're asking for an opinion about an --
-08:-44:-04 **19** he's actually asked for his opinion a number of times, opinion
-08:-44:-04 **20** about what Mr. Amawi -- or it's not even Mr. Amawi. What
-08:-44:-04 **21** someone from the Middle East might be thinking. Either these
-08:-44:-04 **22** questions are objectionable or on redirect it seems to me then
-08:-44:-04 **23** that the Court must and should allow the government to ask
-08:-44:-04 **24** similar questions about what else a person might be thinking,
-08:-44:-04 **25** and what else a person might be offended by and what else a

-08:-44:-04 **1** person might do as a result of that. I think that illustrates
-08:-44:-04 **2** why it is that these are inappropriate questions. But to the
-08:-44:-04 **3** extent the Court's going to permit them, I'd ask for an
-08:-44:-04 **4** opportunity to be able to follow up on those same issues.

-08:-44:-04 **5** MR. IVEY: The government has been able to produce
-08:-44:-04 **6** videos and make their comments and ask their questions of Mr.
-08:-44:-04 **7** Griffin of what the import is with regard to their case. I had
-08:-44:-04 **8** similar objections about the relevance as well. So we should
-08:-44:-04 **9** be able to cross-examine regarding our views about this as well.

-08:-44:-04 **10** MR. SOFER: These are two separate questions,
-08:-44:-04 **11** Judge. When I ask a question of the witness, about whether
-08:-44:-04 **12** what Mr. Amawi thought or what his impression was, and Your
-08:-44:-04 **13** Honor sustained those objections, I was unable to ask them.
-08:-44:-04 **14** The same questions have now been asked by Counsel; not many, two
-08:-44:-04 **15** or three, Your Honor's allowed the answers. What I'm saying is
-08:-44:-04 **16** either these are inappropriate questions --

-08:-44:-04 **17** THE COURT: I tend to agree. And also I do think
-08:-44:-04 **18** it would probably open the door to going further down that road,
-08:-44:-04 **19** and containing all of that within reasonable limits would be
-08:-44:-04 **20** very difficult. So I think it's appropriate, if you wish to
-08:-44:-04 **21** ask, while watching this video or that video, do you recall
-08:-44:-04 **22** whether Mr. Amawi appeared to be offended or whatever. Okay.
-08:-44:-04 **23** But his recollection of what he observed, that's the most
-08:-44:-04 **24** important thing.

-08:-44:-04 **25** MR. IVEY: Okay. I'm about done with that type of

-08:-44:-04 **1** question anyway.

01:47:33 **2** (End of sidebar discussion.)

01:47:34 **3** THE COURT: Two things before we resume. Cindy

-08:-44:-04 **4** indicates some of the jurors may have been having difficulty

-08:-44:-04 **5** hearing. So let's all try to remember to speak directly into

01:47:44 **6** the microphone. If you don't hear something, raise your hand.

01:47:47 **7** Let us know. That's not a problem. It's very important. And

01:47:53 **8** we tried to sort of Jerry-rig a fix with the monitor problem.

01:48:04 **9** You may recall the video was quite fuzzy, a man from the

-08:-44:-04 **10** shoulders up being shot.

01:48:14 **11** Do you recall that video?

01:48:17 **12** THE JUROR: Yes.

01:48:21 **13** MR. SOFER: Judge, can we then take down our

-08:-44:-04 **14** jerry-rigged system?

01:48:33 **15** THE JUROR: We're done with Government's Exhibit

01:48:35 **16** 111.

01:48:40 **17** THE COURT: Let me say the person standing up here

-08:-44:-04 **18** is the I.T. director. That's why he's here, to solve problems

-08:-44:-04 **19** if we have them. I hope he's like the Maytag Repairman.

01:49:00 **20** Okay, Mr. Ivey. Let's all try to speak clearly,

01:49:06 **21** slowly and directly into the microphone.

01:49:09 **22** MR. IVEY: They're going to try to outfit me with a

-08:-44:-04 **23** mike. I'll go on and speak louder.

-08:-44:-04 **24** BY MR. IVEY:

01:49:21 **25**

01:49:21 **1** Q. Okay, Mr. Griffin, I think we had sufficient testimony
-08:-44:-04 **2** on that one video.

-08:-44:-04 **3** Let's play video 111, Government's Exhibit 111.

01:49:41 **4** (Video is shown.)

01:49:47 **5** BY MR. IVEY:

01:49:48 **6** Q. Mr. Griffin, do you agree that that video does not show
-08:-44:-04 **7** you how to make an explosive device?

01:49:54 **8** A. No, it does not.

01:49:57 **9** Q. And that video does not instruct one how to strap an
01:50:03 **10** explosive device or place it anywhere and then detonate?

01:50:13 **11** A. You could say that.

-08:-44:-04 **12** Q. It does not show you how to strap an explosive device to
-08:-44:-04 **13** a vehicle?

-08:-44:-04 **14** A. No, it does not.

-08:-44:-04 **15** Q. It is your opinion to this jury that that video has
01:50:31 **16** meaningful training value?

01:50:34 **17** A. It is.

-08:-44:-04 **18** Q. You testified on cross-examination before the break that
01:50:46 **19** being offended is a choice?

01:50:48 **20** A. Correct.

01:50:54 **21** Q. I'd like to go back to another portion of Government's
01:51:01 **22** Exhibit --

01:51:01 **23** THE COURT: What exhibit?

01:51:03 **24** MR. IVEY: Exhibit 38 is the American, Christian
01:51:08 **25** religious leader. I'd like to play another part of that.

01:51:12 **1** MR. WITMER-RICH: We're going to start at 5
01:51:14 **2** minutes, 15 seconds.
01:51:33 **3** MR. IVEY: No audio.
01:51:54 **4** (Video is shown.)
01:54:44 **5** BY MR. IVEY:
01:54:44 **6** **Q.** Now, Mr. Griffin, when you showed this video with Mr.
01:54:52 **7** Amawi in his apartment, let me ask you this, Mr. Amawi obviously
01:54:58 **8** ascribes to the Islamic faith?
-08:-44:-04 **9** **A.** Yes.
-08:-44:-04 **10** **Q.** And Mr. Amawi's family lives over in Jordan in the
01:55:06 **11** Middle East?
-08:-44:-04 **12** **A.** Yes.
-08:-44:-04 **13** **Q.** When Mr. Amawi viewed this video with you in the privacy
01:55:12 **14** of his home in his bedroom on his computer, was he offended by
-08:-44:-04 **15** this?
01:55:18 **16** **A.** You'd have to ask him.
-08:-44:-04 **17** **Q.** What was your impression of him when you were sitting
01:55:24 **18** next to him watching this video?
01:55:29 **19** **A.** I believe saddened.
01:55:32 **20** **Q.** And, in fact, a lot of the inflammatory comments Mr.
-08:-44:-04 **21** Amawi made on that date that you recorded he made in his home
01:55:46 **22** after looking at that video, didn't he?
01:55:55 **23** **A.** Do you know approximately what time this video was
01:55:59 **24** played? I just know it was viewed that night. I don't know
01:56:04 **25** if the -- any statements more or less were made before this

01:56:14 **1** video or after this video.

-08:-44:-04 **2** **Q.** My question to you is: Was Mr. Amawi offended, in your
01:56:21 **3** impression, by looking at this video?

01:56:23 **4** THE COURT: He can't testify as to whether he was,
-08:-44:-04 **5** quote, offended or not. He can testify as to what he recalls
01:56:30 **6** observing or hearing.

-08:-44:-04 **7** BY MR. IVEY:

-08:-44:-04 **8** **Q.** What did you observe Mr. Amawi's reaction to that video?

01:56:37 **9** **A.** Sort of -- I took it as sadness. Once again, I'm
-08:-44:-04 **10** guessing but...

01:56:47 **11** MR. IVEY: Okay. Let's go to the overhead.

01:56:47 **12** BY MR. IVEY:

-08:-44:-04 **13** **Q.** Mr. Griffin, I've put up here on the overhead

01:57:21 **14** Government's Exhibit 130. Do you recall testifying about this
01:57:29 **15** exhibit in direct examination?

01:57:31 **16** **A.** Yes, I do.

01:57:34 **17** **Q.** This is the copy of the cover of a book, is it not?

01:57:39 **18** **A.** Yes, it is.

01:57:42 **19** **Q.** The individual on the front of the book is al-Zarqawi;
-08:-44:-04 **20** is that correct?

-08:-44:-04 **21** **A.** I believe.

01:57:52 **22** **Q.** Al-Zarqawi is -- was a high ranking, I'll use the
-08:-44:-04 **23** term -- had a high position in Al-Qaeda, correct?

-08:-44:-04 **24** **A.** I believe he was the leader, yes.

-08:-44:-04 **25** **Q.** And this book, you testified that someone gave a copy of

- 08:-44:-04 **1** this book to Mr. Amawi when you and he were over in Jordan,
- 08:-44:-04 **2** correct?
- 01:58:23 **3** A. Yes.
- 01:58:26 **4** Q. And after you observed Mr. Amawi get this book, you
- 01:58:32 **5** obtained a copy, correct?
- 08:-44:-04 **6** A. I was taken by Mr. Amawi to the local book store.
- 08:-44:-04 **7** Q. And you didn't get it from an individual that was part
- 08:-44:-04 **8** of some terrorist cell, did you?
- 08:-44:-04 **9** A. I couldn't tell you who it was.
- 08:-44:-04 **10** Q. You didn't get it in Iraq?
- 01:58:56 **11** A. I did not.
- 08:-44:-04 **12** Q. You didn't get it in Syria?
- 08:-44:-04 **13** A. I did not.
- 08:-44:-04 **14** Q. You got it at a local book store in Irbid, Jordan?
- 08:-44:-04 **15** A. Yes.
- 01:59:11 **16** Q. It was readily available in the Middle East in Jordan in
- 08:-44:-04 **17** book stores?
- 01:59:18 **18** A. I wouldn't call it readily available.
- 08:-44:-04 **19** Q. Well, you bought more than one copy, didn't you?
- 01:59:24 **20** A. Correct.
- 08:-44:-04 **21** Q. And you indicated you got it from a local book store?
- 08:-44:-04 **22** A. Yes, I did.
- 01:59:39 **23** Q. Mr. Griffin, you testified -- let me just ask you.
- 01:59:47 **24** You're proud of your accomplishments in the
- 08:-44:-04 **25** military, are you not?

- 01:59:51 **1** A. Yes.
- 01:59:53 **2** Q. You entered the Army and you were selected for Special
- 08:-44:-04 **3** Forces training?
- 01:59:59 **4** A. Yes.
- 02:00:01 **5** Q. And you were one of 88 candidates selected out of a pool
- 08:-44:-04 **6** of 935 to receive that training?
- 02:00:09 **7** A. No, I was one of the 88 that graduated ultimately.
- 02:00:13 **8** Q. Even better. You graduated?
- 08:-44:-04 **9** A. Correct.
- 08:-44:-04 **10** Q. One of the 88 that graduated out of the 935?
- 02:00:20 **11** A. Correct.
- 02:00:21 **12** THE COURT: Keep your voice up, Mr. Ivey.
- 02:00:28 **13** BY MR. IVEY:
- 02:00:28 **14** Q. We had established that you were proud of your military
- 02:00:32 **15** accomplishments, correct?
- 08:-44:-04 **16** A. Correct.
- 08:-44:-04 **17** Q. And we had established that you entered the military in
- 08:-44:-04 **18** the Army, and you were selected for Special Forces -- correct?
- 08:-44:-04 **19** A. Not when I first --
- 08:-44:-04 **20** Q. -- training?
- 08:-44:-04 **21** A. Not when I first entered, but during.
- 08:-44:-04 **22** Q. At some point in your military career you were selected
- 02:00:48 **23** for Special Forces training, correct?
- 08:-44:-04 **24** A. Correct.
- 02:00:50 **25** Q. Okay. And you were one of 88 out of 935 candidates to

- 02:00:55 **1** graduate in Special Forces training, correct?
- 02:00:57 **2** **A.** Correct.
- 08:-44:-04 **3** **Q.** You had a few setbacks in the military?
- 02:01:05 **4** **A.** Your definition.
- 08:-44:-04 **5** **Q.** You tried acid?
- 02:01:08 **6** **A.** Yes.
- 02:01:10 **7** **Q.** You drank heavily?
- 02:01:13 **8** **A.** Average.
- 02:01:17 **9** **Q.** Average or heavy?
- 02:01:20 **10** **A.** I would say no more than the average person. I never
- 02:01:28 **11** had to go to counseling if that's what you're asking.
- 08:-44:-04 **12** **Q.** No, I'm not. I'm asking if you drank heavy?
- 08:-44:-04 **13** **A.** Maybe, but I would say average.
- 02:01:37 **14** **Q.** Well, let's see what you said when Mr. Sofer asked you
- 08:-44:-04 **15** that question?
- 02:01:48 **16** **A.** If you said I said it on direct, I'll -- I said heavy
- 08:-44:-04 **17** then.
- 02:01:53 **18** THE COURT: There's no question pending.
- 02:01:59 **19** BY MR. IVEY:
- 02:01:59 **20** **Q.** Are you conceding that you could have described it as
- 02:02:02 **21** heavy?
- 08:-44:-04 **22** **A.** Yes, I may have said that.
- 02:02:06 **23** **Q.** Then, unfortunately, you had an injury?
- 02:02:12 **24** **A.** Yes.
- 02:02:13 **25** **Q.** Correct? That was, I believe, one of your knees?

-08:-44:-04 **1** A. Yes.

02:02:18 **2** Q. And that eventually got you classified, and I'm using
-08:-44:-04 **3** that term loosely, as a disabled veteran?

02:02:31 **4** A. When I left the military, yes.

-08:-44:-04 **5** Q. And the military at that particular time you considered
-08:-44:-04 **6** it to be your life?

02:02:40 **7** A. Correct.

-08:-44:-04 **8** Q. In fact, you were moved emotionally about testifying
-08:-44:-04 **9** about this on direct, correct?

-08:-44:-04 **10** A. Correct.

-08:-44:-04 **11** Q. When you left, what was your life at that particular
-08:-44:-04 **12** time, you felt lost?

02:02:57 **13** A. Yes.

02:02:58 **14** Q. And you had no real plans?

02:03:01 **15** A. No.

02:03:03 **16** Q. But then you got a second opportunity, correct? You
02:03:08 **17** volunteered for the DEA to work with them?

02:03:12 **18** A. Before that knowing where I was going, but yes
02:03:21 **19** ultimately.

-08:-44:-04 **20** THE COURT: I couldn't hear what you said.

02:03:24 **21** THE WITNESS: I don't know -- he said I had a
02:03:26 **22** second opportunity.

02:03:27 **23** BY MR. IVEY:

02:03:27 **24** Q. In April of 2001 you volunteered to work for the DEA?

-08:-44:-04 **25** A. Correct.

- 08:-44:-04 **1** Q. And they said yes, and you were able to do it?
- 02:03:34 **2** A. Correct.
- 02:03:40 **3** Q. You had some, again, unfortunate events that took place
- 02:03:46 **4** when you worked for the DEA?
- 02:03:48 **5** A. Yes.
- 02:03:50 **6** Q. You, while working for the DEA, you began to use
- 08:-44:-04 **7** marijuana and cocaine every week?
- 02:03:59 **8** A. An average, yes.
- 02:04:02 **9** Q. And you also sold some pills that was without DEA
- 08:-44:-04 **10** approval?
- 02:04:11 **11** A. Correct.
- 02:04:13 **12** Q. This was prior to 9/11, correct?
- 02:04:18 **13** A. Correct.
- 08:-44:-04 **14** Q. And prior to 9/11, again, you had developed a point
- 08:-44:-04 **15** where you were self-absorbed?
- 08:-44:-04 **16** A. I believe so.
- 08:-44:-04 **17** Q. And you had fell into what you feared, the negative
- 08:-44:-04 **18** things and you were part of the problem?
- 08:-44:-04 **19** A. Correct.
- 02:04:36 **20** Q. But 9/11 gave you a new look on life?
- 02:04:43 **21** A. Somewhat.
- 02:04:46 **22** Q. And you got -- you were offered again another
- 02:04:52 **23** opportunity, that was to work with the FBI?
- 02:04:59 **24** A. Yes.
- 02:05:02 **25** Q. And at some point during the FBI you slipped just a

-08:-44:-04 **1** little bit, you used some marijuana here and there, correct?

-08:-44:-04 **2** A. Correct.

02:05:11 **3** Q. But you were affected by 9/11 and you wanted to change,

-08:-44:-04 **4** you wanted to do good. You wanted to be part of the solution

-08:-44:-04 **5** and not part of the problem, correct?

-08:-44:-04 **6** A. Correct.

02:05:28 **7** Q. You also had another opportunity to be paid to do this,

-08:-44:-04 **8** correct. You were making -- you made about 56,000 a year?

-08:-44:-04 **9** A. Correct.

02:05:38 **10** Q. And so you wanted to -- you wanted this to work out, I

-08:-44:-04 **11** mean you wanted to do good, you wanted to help. You wanted to

-08:-44:-04 **12** find threats against the United States and help stop them?

02:05:53 **13** A. Yes.

02:05:56 **14** Q. Now, the FBI asked you, and I think you've already

02:06:02 **15** acknowledged this, look at -- to look at some threats that may

02:06:07 **16** be in the Muslim community?

-08:-44:-04 **17** A. Correct.

-08:-44:-04 **18** Q. Yet you, yourself, were not a practicing Muslim?

-08:-44:-04 **19** A. I was not.

-08:-44:-04 **20** Q. You were a Christian, and I believe you said you had a

-08:-44:-04 **21** personal relationship with Jesus Christ?

02:06:22 **22** A. Yes, I began having.

02:06:27 **23** Q. Now, in -- despite not being a Muslim in actuality, when

02:06:34 **24** you came into the Muslim community you were -- that was a cover,

02:06:38 **25** correct? That was part of your cover, that you were a recent

- 02:06:45 **1** convert to Islam?
- 02:06:46 **2** **A.** No, the convert, when I converted to Islam, it was
- 02:06:50 **3** during that period of time, not before.
- 02:06:52 **4** **Q.** Well, you were not at any point through this an actual
- 08:-44:-04 **5** Muslim, correct?
- 08:-44:-04 **6** **A.** Correct.
- 02:07:02 **7** **Q.** Yet the FBI asked you to gather information in the
- 08:-44:-04 **8** Muslim community?
- 02:07:10 **9** **A.** Correct.
- 02:07:11 **10** **Q.** Now, several Muslims, such as the defendants in this
- 08:-44:-04 **11** case, speak fluent Arabic, correct?
- 02:07:20 **12** **A.** I believe they do.
- 02:07:22 **13** **Q.** You did not speak fluent Arabic at the time you took on
- 02:07:27 **14** this task?
- 02:07:28 **15** **A.** I did not.
- 02:07:29 **16** **Q.** And you did not speak fluent Arabic now?
- 02:07:33 **17** **A.** I do not.
- 02:07:34 **18** **Q.** Now, the FBI asked you to gather information, I think
- 08:-44:-04 **19** you've said that a few times already, correct?
- 08:-44:-04 **20** **A.** Correct.
- 08:-44:-04 **21** **Q.** The FBI did not tell you to create evidence, did they?
- 08:-44:-04 **22** **A.** Correct.
- 08:-44:-04 **23** **Q.** The FBI did not tell you to create and assemble a
- 02:07:56 **24** terrorist cell, did they?
- 02:08:01 **25** **A.** I cannot recall.

02:08:03 **1** **Q.** So you're saying it's possible then that the FBI told
-08:-44:-04 **2** you, Mr. Griffin, we want you to go out and we want you to
-08:-44:-04 **3** create a terrorist cell, that could have happened?

-08:-44:-04 **4** **A.** I believe, once again -- would you like me to guess
-08:-44:-04 **5** or...

02:08:22 **6** **Q.** You would have to guess to answer that question?

02:08:25 **7** **A.** For as far as the guidance given, yes. It's been some
02:08:30 **8** years since the instructions were given.

-08:-44:-04 **9** **Q.** So the government then may have, it's very possible they
-08:-44:-04 **10** may have told you we want you to go into the Muslim community,
02:08:42 **11** and we want you to start talking to them, to Muslims, and we
-08:-44:-04 **12** want you to create, we want you to put people together, we want
-08:-44:-04 **13** you to create a terrorist cell in this country? That's
-08:-44:-04 **14** possible that that happened?

-08:-44:-04 **15** **A.** I don't think -- no, basically that was -- I was a
-08:-44:-04 **16** Special Forces soldier, and cells is, you know -- that's what I
02:09:08 **17** understood. That was just one of those thing, one of those
02:09:11 **18** covers that I did.

02:09:13 **19** **Q.** Well, I don't believe that's responsive to my question.
02:09:18 **20** My question is simply, did the government instruct you, sir, is
-08:-44:-04 **21** it possible they instructed you to find some individuals who are
02:09:29 **22** not otherwise connected, who are not otherwise in the process of
02:09:33 **23** engaging in any illegal activity and then to put them together
02:09:37 **24** and then to take them and cause the impression that they are
-08:-44:-04 **25** some terrorist alliance; did they do that? Did the government

-08:-44:-04 **1** tell you to do that?

-08:-44:-04 **2** MR. SOFER: Objection.

-08:-44:-04 **3** THE COURT: It's overruled.

-08:-44:-04 **4** A. And my answer is, I cannot recall.

02:09:53 **5** BY MR. IVEY:

02:09:53 **6** Q. So that is something that if they did tell you to do

-08:-44:-04 **7** that that you would have forgotten over the period of time?

-08:-44:-04 **8** A. No, I can't recall the specifics; you would have to ask

-08:-44:-04 **9** the government.

02:10:07 **10** Q. Well, your understanding, I think you testified several

-08:-44:-04 **11** times, was that you were to gather information?

-08:-44:-04 **12** A. Correct.

-08:-44:-04 **13** Q. The book that I put up of Mr. Zarqawi, you purchased

-08:-44:-04 **14** that at a book store you said, correct?

02:10:25 **15** A. Correct.

-08:-44:-04 **16** Q. And you brought that book back to America, correct?

02:10:30 **17** A. A couple copies, yes.

-08:-44:-04 **18** Q. And you gave one of those copies to Mr. Mazloun?

-08:-44:-04 **19** A. Correct.

02:10:39 **20** Q. So you didn't find in your gathering of information that

-08:-44:-04 **21** Mr. Mazloun was already in possession of that book, did you?

02:10:49 **22** A. No, I did not.

-08:-44:-04 **23** Q. You went and you gave him a copy of that book, didn't

-08:-44:-04 **24** you?

-08:-44:-04 **25** A. Correct.

-08:-44:-04 **1** Q. As the representative or operative of the government,
02:11:00 **2** you supplied one of the defendants in this case with a piece of
-08:-44:-04 **3** evidence that the government has introduced, correct?
02:11:09 **4** A. As part of my cover, yes.
02:11:12 **5** Q. So that is not gathering information, that is supplying
02:11:17 **6** information to this case, isn't it?
02:11:20 **7** A. If that's your definition, yes.
02:11:29 **8** Q. When you went to shoot with the defendants, Mr. Mazloun
02:11:38 **9** and Mr. Amawi, you took Mr. Amawi on -- Mr. Amawi met you for
-08:-44:-04 **10** the purpose of shooting on January -- late January of 2005,
02:11:53 **11** correct?
-08:-44:-04 **12** A. Correct.
02:11:55 **13** Q. And you, as the government agent, taught him or showed
02:12:02 **14** him how to shoot a firearm, correct?
02:12:04 **15** A. On that 21st?
02:12:07 **16** Q. Yes.
02:12:08 **17** A. I didn't --
-08:-44:-04 **18** Q. He just shot?
-08:-44:-04 **19** A. I was assessing him at that time.
-08:-44:-04 **20** Q. You, as the government agent, were evaluating him in his
02:12:15 **21** shooting ability?
02:12:16 **22** A. Correct.
-08:-44:-04 **23** Q. And you are the one that suggested that you go to
02:12:22 **24** Cleland's to shoot, correct?
02:12:25 **25** A. Best I can recall is I had been shooting out there at

- 02:12:32 **1** Cleland's and informed him.
- 08:-44:-04 **2** Q. And invited him to come out and shoot?
- 08:-44:-04 **3** A. Yes.
- 02:12:36 **4** Q. So in your gathering of information, you did not learn
- 02:12:40 **5** that Mr. Amawi had been going to Cleland's to shoot in the past
- 08:-44:-04 **6** or that's where he normally shot and you showed up, correct?
- 02:12:49 **7** A. He had not been shooting there that year.
- 08:-44:-04 **8** Q. So as the government, in your gathering of information,
- 08:-44:-04 **9** you're actually inviting him to shoot, correct?
- 08:-44:-04 **10** A. Yes.
- 08:-44:-04 **11** Q. Well, that's not gathering information, that is
- 02:13:02 **12** supplying information or conduct, isn't it?
- 02:13:07 **13** A. That's assessing how much he knows.
- 02:13:11 **14** Q. When you went out to shoot at Cleland's with Mr. Mazloun
- 02:13:20 **15** and Mr. Amawi in April, on April 20th, you paid for the use of
- 08:-44:-04 **16** the range?
- 08:-44:-04 **17** A. Correct.
- 02:13:37 **18** Q. You paid for the targets?
- 02:13:43 **19** A. These are questions on statements, correct.
- 08:-44:-04 **20** Q. Pardon?
- 02:13:49 **21** A. These are statements, questions not statements, correct.
- 02:13:52 **22** Q. "Yes"?
- 08:-44:-04 **23** A. Yes.
- 02:13:53 **24** Q. You brought guns to shoot with?
- 08:-44:-04 **25** A. On the 20th.

02:14:05 **1** Q. At various points in this case you supplied the firearm?

02:14:09 **2** A. Only on two occasions did I supply firearms.

02:14:21 **3** Q. I'm going to show you what's been marked Government's

02:14:27 **4** Exhibit 84. Do you recognize this gun?

-08:-44:-04 **5** A. Yes, I do.

-08:-44:-04 **6** Q. Is that your gun?

-08:-44:-04 **7** A. It is not.

02:14:40 **8** Q. Did you rent that gun?

-08:-44:-04 **9** A. Yes, at least on one occasion.

-08:-44:-04 **10** Q. You rented that gun at Cleland's?

-08:-44:-04 **11** A. Yes.

-08:-44:-04 **12** Q. You paid for the rental?

-08:-44:-04 **13** A. Yes.

-08:-44:-04 **14** Q. Mr. Amawi didn't pay for the rental of that gun?

-08:-44:-04 **15** A. Not on this occasion.

-08:-44:-04 **16** Q. Mr. Mazloun didn't pay for the rental of that gun?

02:14:59 **17** A. He didn't.

02:15:00 **18** Q. So in your gathering of information, you did not report

02:15:07 **19** to the FBI that Mr. Amawi, Mr. Mazloun had rented a gun and

-08:-44:-04 **20** invited you out to shoot? It was quite the opposite, correct?

02:15:18 **21** A. I had reported to the FBI turning over the actual.

-08:-44:-04 **22** THE COURT: I'm sorry, you have to answer yes or no

02:15:29 **23** unless you cannot answer the question or it's compound.

-08:-44:-04 **24** THE WITNESS: Your Honor, it's a compounded

02:15:34 **25** question, I can't.

02:15:35 **1** THE COURT: Then why don't you rephrase the
-08:-44:-04 **2** question.
02:15:37 **3** THE WITNESS: Could you please rephrase?
02:15:39 **4** BY MR. IVEY:
02:15:39 **5** Q. I'll just ask another one. I'll show you Government's
02:15:44 **6** Exhibit 85.
-08:-44:-04 **7** Do you recognize Government's Exhibit 85?
-08:-44:-04 **8** A. Yes, I do.
-08:-44:-04 **9** Q. That is your gun, isn't it?
02:15:52 **10** A. Yes, it is.
02:15:53 **11** Q. That's your Desert Eagle .357, correct?
-08:-44:-04 **12** A. Yes, it is.
02:15:58 **13** Q. So in your gathering of information, you did not find
02:16:06 **14** that Mr. Amawi was in possession of this gun at the time you
-08:-44:-04 **15** started investigating him, did you?
-08:-44:-04 **16** A. No.
02:16:13 **17** Q. That was your gun?
-08:-44:-04 **18** A. Correct.
02:16:16 **19** Q. So again, Mr. Griffin, you, as the government agent, the
02:16:23 **20** government operative, you supplied evidence into this case,
-08:-44:-04 **21** correct?
-08:-44:-04 **22** A. Correct.
02:16:34 **23** Q. I'm going to show you Government's Exhibit 86.
-08:-44:-04 **24** Do you recognize this?
-08:-44:-04 **25** A. Yes, I do.

- 08:-44:-04 **1** Q. What is that?
- 08:-44:-04 **2** A. That is my Glock 19.
- 08:-44:-04 **3** Q. That's your gun?
- 08:-44:-04 **4** A. Yes.
- 02:16:45 **5** Q. That's a gun that you utilized or you gave Mr. Amawi
- 02:16:51 **6** and/or Mr. Mazloun to either shoot or you demonstrated, correct?
- 08:-44:-04 **7** A. Yes.
- 02:17:00 **8** Q. So you did not happen upon in your information gathering
- 02:17:05 **9** Mr. Amawi or Mr. Mazloun or Mr. El-Hindi in possession of any of
- 08:-44:-04 **10** these guns, correct?
- 08:-44:-04 **11** A. Correct.
- 02:17:13 **12** Q. You supplied them for whatever purposes they were to be
- 08:-44:-04 **13** used for?
- 02:17:18 **14** A. Correct.
- 02:17:39 **15** Q. Okay. On February 16 of 2005, that is the one and only
- 08:-44:-04 **16** time that all three of the defendants in this case, Mr. Amawi,
- 08:-44:-04 **17** Mr. El-Hindi, and Mr. Mazloun, were together in your presence?
- 02:17:59 **18** A. Yes.
- 02:18:02 **19** Q. And at that meeting, you brought various periodicals,
- 08:-44:-04 **20** books, correct?
- 08:-44:-04 **21** A. Correct.
- 02:18:15 **22** Q. I show you what's marked Government's Exhibit 66. That
- 08:-44:-04 **23** is a --
- 08:-44:-04 **24** Well, do you recognize this, what's in the photo?
- 08:-44:-04 **25** A. Yes, I do.

-08:-44:-04 **1** Q. This is a manual, correct, a supplemental text,
02:18:33 **2** insurgency and counter-insurgency, Special Forces, correct?
02:18:38 **3** A. Correct.
02:18:40 **4** Q. This is your book?
-08:-44:-04 **5** A. Yes.
02:18:42 **6** Q. That you brought to the meeting, correct?
-08:-44:-04 **7** A. Correct.
02:18:46 **8** Q. Now, in your information gathering, you were not able to
02:18:52 **9** report to the FBI that I have discovered that these three
02:18:58 **10** gentlemen are in possession of a supplemental text of insurgency
-08:-44:-04 **11** and counter-insurgency; that was not information you were able
-08:-44:-04 **12** to gather, was it?
02:19:07 **13** A. That they had that book?
02:19:09 **14** Q. Right.
-08:-44:-04 **15** A. Correct.
02:19:12 **16** THE COURT: I didn't hear you.
02:19:14 **17** THE WITNESS: Correct. They didn't have that
02:19:16 **18** book.
-08:-44:-04 **19** BY MR. IVEY:
-08:-44:-04 **20** Q. So you as the government agent, you supplied this
02:19:21 **21** information, this book to these individuals, correct?
02:19:25 **22** A. Yes.
-08:-44:-04 **23** Q. For their review?
-08:-44:-04 **24** A. For their review, yes.
-08:-44:-04 **25** Q. And but for you, they wouldn't have had that book to

-08:-44:-04 **1** look at on that date, would they?

-08:-44:-04 **2** **A.** I -- I couldn't tell you.

02:19:42 **3** **Q.** I would like to show you what's marked Government's

02:19:47 **4** Exhibit 67.

02:19:50 **5** Do you recognize that book?

-08:-44:-04 **6** I'm going to put the cover photo up here.

-08:-44:-04 **7** **A.** Yes, I do.

-08:-44:-04 **8** **Q.** That is the Drager SCUBA diving tactical book that you

-08:-44:-04 **9** testified to in your direct examination, correct?

02:20:08 **10** **A.** Drager closed circuit, yes.

02:20:12 **11** THE COURT: I didn't hear you.

02:20:17 **12** THE WITNESS: Drager closed circuit.

02:20:17 **13** BY MR. IVEY:

02:20:21 **14** **Q.** This is another periodical that you made available for

02:20:25 **15** the defendants' review on February 16, 2005?

-08:-44:-04 **16** **A.** Yes.

02:20:33 **17** **Q.** And again, in your information gathering function, you

-08:-44:-04 **18** weren't able to report to the FBI that these three gentlemen

-08:-44:-04 **19** were in possession of this book when you arrived at the meeting,

02:20:47 **20** correct?

-08:-44:-04 **21** **A.** Correct.

-08:-44:-04 **22** **Q.** You -- to your knowledge, none of these gentlemen owned

-08:-44:-04 **23** such a book?

-08:-44:-04 **24** **A.** Not to my knowledge.

02:20:54 **25** **Q.** You, as the government agent, your information gathering

02:20:59 **1** function, actually supplied this information to these three

02:21:04 **2** gentlemen, didn't you?

-08:-44:-04 **3** **A.** To review, yes.

02:21:12 **4** **Q.** I'm going to show you what I've marked Government's
02:21:18 **5** Exhibit 68.

-08:-44:-04 **6** Do you recognize that book?

02:21:20 **7** **A.** Yes, I do.

-08:-44:-04 **8** **Q.** That is a survival training manual, I suppose?

02:21:27 **9** **A.** Correct.

02:21:28 **10** **Q.** That again is one of the books that you -- that's your
02:21:34 **11** book, correct?

-08:-44:-04 **12** **A.** Yes.

-08:-44:-04 **13** **Q.** And, again, you supplied this as the government agent to
02:21:41 **14** these three defendants to review at the February 16 meeting?

-08:-44:-04 **15** **A.** Yes.

02:21:46 **16** **Q.** You were not, in your information gathering capacity or

02:21:51 **17** function, able to report to the FBI that I have discovered that

-08:-44:-04 **18** any of these three gentlemen were in possession of this book

-08:-44:-04 **19** when I got to the meeting?

-08:-44:-04 **20** **A.** Correct.

02:22:03 **21** **Q.** You, as the government agent and operative, in your

-08:-44:-04 **22** information gathering function actually supplied this book for

-08:-44:-04 **23** review?

02:22:12 **24** **A.** Correct.

02:22:22 **25** **Q.** Government's Exhibit 7.

-08:-44:-04 **1** That's a bodyguard protection guide to VIP --

02:22:36 **2** Practical Guide to VIP Protection, correct?

-08:-44:-04 **3** A. Yes.

-08:-44:-04 **4** Q. Again, that's your book?

-08:-44:-04 **5** A. Correct.

-08:-44:-04 **6** Q. You had -- by the way, you really had a security company
02:22:50 **7** didn't you or was that part of the cover?

02:22:52 **8** A. It's part of the cover but I was forming one, yes.

-08:-44:-04 **9** THE COURT: Didn't hear you.

-08:-44:-04 **10** THE WITNESS: I was forming it, yes. I don't know
02:22:59 **11** if that's your definition of having it.

-08:-44:-04 **12** BY MR. IVEY:

-08:-44:-04 **13** Q. Were you otherwise training other individuals in

02:23:07 **14** protection skills legitimately for a legitimate bodyguard

-08:-44:-04 **15** service?

-08:-44:-04 **16** A. No.

-08:-44:-04 **17** Q. Did you ever do that?

02:23:18 **18** A. In my life?

-08:-44:-04 **19** Q. During the course of this investigation or just prior it
02:23:26 **20** to?

02:23:26 **21** A. Prior to, possibly.

02:23:28 **22** Q. When you were at the Mosque, did you pass out your card
02:23:35 **23** to other parishioners (sic) of the Mosque that you were -- you

-08:-44:-04 **24** had a security company?

02:23:43 **25** A. Yes.

-08:-44:-04 **1** Q. And did you inform other members of the Mosque that you
02:23:48 **2** were interested in recruiting individuals not for violent Jihad,
-08:-44:-04 **3** but to be legitimate security personnel?

02:23:56 **4** A. No.

02:23:58 **5** Q. You never did that?

-08:-44:-04 **6** A. Recruit them to be a bodyguard?

-08:-44:-04 **7** Q. Yeah.

-08:-44:-04 **8** A. No, I always told that -- what I could provide and what
02:24:11 **9** I was doing.

02:24:12 **10** Q. Did you always indicate that what you providing and what

-08:-44:-04 **11** you were doing -- I'm not just talking about these defendants,

-08:-44:-04 **12** but anybody -- did you always represent that you were only

02:24:24 **13** training people for some violent terrorist act, Jihad?

02:24:30 **14** A. Was I -- say that again, please. I'm sorry.

02:24:36 **15** THE COURT: Why don't you rephrase.

02:24:39 **16** BY MR. IVEY:

02:24:39 **17** Q. When you would go to the Mosque and represent that you

-08:-44:-04 **18** had a security company or were forming one -- or however you

-08:-44:-04 **19** want to put it -- did you ever indicate to individuals that you

-08:-44:-04 **20** were forming this for a legitimate security business?

02:24:55 **21** A. Yes.

02:24:56 **22** Q. Okay. And did you invite individuals to join you or

-08:-44:-04 **23** work under you or be trained by you for legitimate security

02:25:07 **24** purposes?

-08:-44:-04 **25** A. Yes.

02:25:09 **1** Q. And you would do that at the Mosque sometimes?

-08:-44:-04 **2** A. Among other places, yes.

-08:-44:-04 **3** Q. Among other places?

-08:-44:-04 **4** A. Yes.

02:25:17 **5** Q. Now, I'd like to show you -- well, again, I don't think

02:25:23 **6** I asked you. This bodyguard VIP protection book, it's your

-08:-44:-04 **7** book?

-08:-44:-04 **8** A. Yes.

-08:-44:-04 **9** Q. And you brought it to the February 16 meeting?

-08:-44:-04 **10** A. Yes.

02:25:34 **11** Q. I'd like to show you Government's Exhibit 71, the

02:25:38 **12** tactical pistol book.

02:25:42 **13** Government's Exhibit 71 is a photograph of your

-08:-44:-04 **14** book?

-08:-44:-04 **15** A. Correct.

-08:-44:-04 **16** Q. And you, as the government operative, in your capacity

02:25:52 **17** or serving in your function of gathering information, you

02:25:56 **18** supplied that book at that meeting?

02:25:58 **19** A. Correct.

02:26:17 **20** Q. Now, videos. You watched -- I think you've already

02:26:27 **21** testified to numerous videos with Mr. Amawi --

02:26:30 **22** A. Correct.

02:26:31 **23** Q. -- didn't you?

02:26:35 **24** And you would ask Mr. Amawi for copies of the

-08:-44:-04 **25** videos that you would see?

02:26:42 **1** A. Yes.

02:26:43 **2** Q. And I think in several of the tapes you would say words

-08:-44:-04 **3** to the effect, "I got to have that, you got to give me that,"

02:26:55 **4** correct?

-08:-44:-04 **5** A. Correct.

-08:-44:-04 **6** Q. You would make a request for the information?

-08:-44:-04 **7** A. Yes.

-08:-44:-04 **8** Q. Mr. Amawi would not be on these tapes saying, I've

02:27:03 **9** already prepared these discs, take it, without you first asking

02:27:09 **10** for it?

-08:-44:-04 **11** A. I don't believe that's the case. At least once.

02:27:14 **12** Q. At least once?

-08:-44:-04 **13** A. Yes.

02:27:16 **14** Q. So over almost two years of investigating and taping Mr.

-08:-44:-04 **15** Amawi, at least one time he volunteered a disk to you?

-08:-44:-04 **16** A. Yes, that I can recall. Yes.

-08:-44:-04 **17** Q. You can only recall once in two years?

02:27:31 **18** A. Yes.

-08:-44:-04 **19** Q. Okay. And -- but Mr. Amawi did not download videos onto

-08:-44:-04 **20** discs and then go to the Mosque and then pass them out to

-08:-44:-04 **21** individuals, did he? You didn't observe that?

-08:-44:-04 **22** A. I never observed that, no.

-08:-44:-04 **23** Q. When you would come to Mr. Amawi's apartment and look at

-08:-44:-04 **24** videos, Mr. Amawi would not have individuals, other Muslims from

02:28:03 **25** the Mosque or other places at his home having viewing sessions

-08:-44:-04 **1** with numerous people, did you? You didn't see --

-08:-44:-04 **2** **A.** I only see -- I've only seen at least one occasion.

-08:-44:-04 **3** **Q.** In two years, one occasion?

-08:-44:-04 **4** **A.** Where I've physically seen it.

-08:-44:-04 **5** **Q.** And individuals were not out in the Muslim community

-08:-44:-04 **6** saying, I've got this great bomb vest video or Bin Laden video

02:28:34 **7** or Al-Qaeda video from Mr. Amawi, did they?

02:28:38 **8** **A.** Not that I gathered.

02:28:41 **9** **Q.** And people in the Muslim community were not saying, Mr.

02:28:46 **10** Amawi gave me this bomb vest video or this explosive video or

02:28:51 **11** Osama Bin Laden video and he's trying to get me to look at these

02:28:56 **12** and go over to Iraq and martyr myself and blow myself up? That

-08:-44:-04 **13** didn't happen, did it?

02:29:03 **14** **A.** I was at least told on one occasion that, yes, that that

-08:-44:-04 **15** was the case.

-08:-44:-04 **16** **Q.** That was when?

02:29:22 **17** **A.** I don't believe I'm allowed to answer that, Your Honor.

02:29:25 **18** THE COURT: Okay.

02:29:27 **19** **A.** I can't recall the specific date, but...

02:29:30 **20** **Q.** Well, you didn't testify to that on direct, did you?

-08:-44:-04 **21** **A.** That --

02:29:37 **22** MR. HARTMAN: Judge, can we sidebar, please?

02:33:27 **23** (Whereupon the following discussion was had at the

-08:-44:-04 **24** bench outside the hearing of the jury:)

-08:-44:-04 **25** MR. SOFER: I would note, Your Honor --

-08:-44:-04 **1** THE COURT: What's the purpose of the question?

-08:-44:-04 **2** You're asking him whether he observed people out in the

-08:-44:-04 **3** community saying that we've got these great videos, you ought to

-08:-44:-04 **4** get these videos?

-08:-44:-04 **5** MR. IVEY: It goes to intent, the lack of intent.

-08:-44:-04 **6** THE COURT: But I think you can ask that kind of

-08:-44:-04 **7** question: Did you hear people talking about these videos? You

-08:-44:-04 **8** didn't see Mr. Amawi talking and peddling these videos? So far

-08:-44:-04 **9** as you know, he wasn't making copies for anybody else?

-08:-44:-04 **10** MR. IVEY: Okay.

-08:-44:-04 **11** MR. SOFER: The reason we're going to have a

-08:-44:-04 **12** problem here is it calls for hearsay, it calls for out-of-court

-08:-44:-04 **13** statements. That's inappropriate.

-08:-44:-04 **14** MR. IVEY: I'll rephrase the question.

-08:-44:-04 **15** MR. SOFER: Once again, I say imagine if the

-08:-44:-04 **16** government asked this question, you have heard people in the

-08:-44:-04 **17** community saying you got videos from Mr. Amawi, then we would

-08:-44:-04 **18** have a sustained objection on hearsay grounds. It's the same

-08:-44:-04 **19** question. It's asked by the defense.

-08:-44:-04 **20** MR. IVEY: I'll turn it around. I won't ask it

-08:-44:-04 **21** again. We don't have to fight about it.

-08:-44:-04 **22** THE COURT: Did you see Mr. Amawi out in the

-08:-44:-04 **23** community?

-08:-44:-04 **24** MR. IVEY: I agree.

-08:-44:-04 **25** MR. HARTMAN: I want to know who he observed Mr.

-08:-44:-04 **1** Amawi recruited.

-08:-44:-04 **2** THE COURT: You'll get your turn.

-08:-44:-04 **3** MR. SOFER: Why does he -- I don't see how any of

-08:-44:-04 **4** this is relevant.

-08:-44:-04 **5** MR. IVEY: I will abandon this, move on to -- We

-08:-44:-04 **6** don't have to stand here.

-08:-44:-04 **7** THE COURT: I think it is relevant. And I think

-08:-44:-04 **8** that's a relevant question. Whether -- whom he may have seen

-08:-44:-04 **9** Mr. Amawi --

-08:-44:-04 **10** MR. HARTMAN: Unless the government can tell me --

-08:-44:-04 **11** THE COURT: You'll have your chance on

-08:-44:-04 **12** cross-examination.

-08:-44:-04 **13** MR. SOFER: I think the problem here again, we're

-08:-44:-04 **14** going to have it who ever asks the questions, when you ask for

-08:-44:-04 **15** out-of-court statements and things happening out of court, that

-08:-44:-04 **16** would be --

-08:-44:-04 **17** THE COURT: If Mr. Hartman wants to ask whether he

-08:-44:-04 **18** observed, quote, recruiting, he can say yes. Then Mr. Hartman

-08:-44:-04 **19** can ask when, where, whom, what did you observe. And whether

-08:-44:-04 **20** Mr. Amawi was saying I heard -- I assume this isn't a direct

-08:-44:-04 **21** quote, but I have no idea, but he said I heard Mr. Amawi

-08:-44:-04 **22** speaking at the Mosque and saying let's all get trained and go

-08:-44:-04 **23** to Iraq and blow up Americans. That statement could be -- he

-08:-44:-04 **24** could testify that he heard that statement. It's not offered

-08:-44:-04 **25** for truth of the matter asserted. It's not hearsay. I think

-08:-44:-04 **1** that's --

-08:-44:-04 **2** MR. HARTMAN: My problem was it went to the

-08:-44:-04 **3** hearsay, but with him saying I don't believe I'm allowed -- at

-08:-44:-04 **4** liberty to answer the question. I don't know what privilege

-08:-44:-04 **5** keeps him from answering the question.

-08:-44:-04 **6** MR. SOFER: I don't think it's a privilege. I

-08:-44:-04 **7** think, I think -- I could be wrong about. This -- I don't know

-08:-44:-04 **8** what's running through the witness's mind but I think what he's

-08:-44:-04 **9** trying to get at is he heard from somebody -- the question was

-08:-44:-04 **10** asked in a way what the witness heard in the community.

-08:-44:-04 **11** MR. IVEY: I think they can do this in their

-08:-44:-04 **12** examination.

-08:-44:-04 **13** THE COURT: We're all set?

-08:-44:-04 **14** (End of side-bar discussion.)

02:33:37 **15** THE COURT: You may continue.

02:33:42 **16** BY MR. IVEY:

02:33:43 **17** Q. Did you ever see Mr. Amawi at the Mosque passing out

02:33:49 **18** discs of these videos?

02:33:51 **19** A. I did not.

02:34:08 **20** Q. Now, you did not see Mr. Amawi -- Mr. Amawi did not

-08:-44:-04 **21** carry guns around with him, did he?

-08:-44:-04 **22** A. Not that I know of.

02:34:25 **23** Q. And in the two years that you were with him, you did not

-08:-44:-04 **24** see him with a gun of his own?

02:34:35 **25** A. No, I didn't.

-08:-44:-04 **1** Q. And in the two years that you were taping him, Mr.
-08:-44:-04 **2** Amawi, you did not see him in possession of any explosive
02:34:48 **3** device?

02:34:49 **4** A. No.

02:34:54 **5** Q. Now, in several of your conversations -- well,
02:35:06 **6** throughout this two-year period, Mr. Amawi again did not have --
02:35:13 **7** you weren't able to report to the FBI that Mr. Amawi had been in
-08:-44:-04 **8** contact with Mr. Zubair and Mr. Khaleel, correct? You didn't
-08:-44:-04 **9** gather that information?

-08:-44:-04 **10** A. No.

02:35:26 **11** MR. IVEY: Your Honor, can we approach for a
02:35:29 **12** moment?

-08:-44:-04 **13** THE COURT: Okay.

02:35:30 **14** (Whereupon the following discussion was had at the
02:41:31 **15** bench outside the hearing of the jury:)

02:41:31 **16** MR. IVEY: I am at a point where I would like to
-08:-44:-04 **17** play one of my clips from the transcripts under the rule of
-08:-44:-04 **18** completeness; it is the conversation between Mr. Griffin and Mr.
-08:-44:-04 **19** Amawi. The focus of my question is Mr. Griffin's statements
-08:-44:-04 **20** where he invites Mr. Amawi to the conference where Zubair and
-08:-44:-04 **21** Khaleel are. I think I should be permitted to do that.

-08:-44:-04 **22** MR. SOFER: There's nothing Mr. Amawi says on it
-08:-44:-04 **23** that is exculpatory or what he would testify to, none of his
-08:-44:-04 **24** statements are offered for the truth. We can't cross-examine
-08:-44:-04 **25** this witness on his statement.

-08:-44:-04 **1** Again, Judge, I thought we went through all this.

-08:-44:-04 **2** If he wants to ask him questions about this, the witness is

-08:-44:-04 **3** entitled to be asked; that is black letter evidentiary

-08:-44:-04 **4** principles. If he wants to ask the question of him about

-08:-44:-04 **5** whether he did such-and-such, and the witness says something

-08:-44:-04 **6** which causes this to come in --

-08:-44:-04 **7** THE COURT: I would agree. You can ask him, do

-08:-44:-04 **8** you recall recording a conversation with Mr. Amawi on day X.

-08:-44:-04 **9** If you have the transcript: Do you recall on that day at that

-08:-44:-04 **10** time you made the following statements and he made following

-08:-44:-04 **11** statements? If he says yes, he does, fine.

-08:-44:-04 **12** MR. SOFER: If he says he doesn't recall I thought

-08:-44:-04 **13** we agreed the transcript would be shown to him or they can play

-08:-44:-04 **14** the tape to him. I'm confident -- I shouldn't say how I think

-08:-44:-04 **15** it will go, but I think that's the appropriate way of going

-08:-44:-04 **16** about it.

-08:-44:-04 **17** MR. IVEY: So far he hasn't remembered much of what

-08:-44:-04 **18** I've asked him.

-08:-44:-04 **19** THE COURT: In which case, you show him the

-08:-44:-04 **20** transcript. I think that's the better way to do it rather than

-08:-44:-04 **21** displaying the video.

-08:-44:-04 **22** MR. IVEY: All right. The other issue.

-08:-44:-04 **23** THE COURT: Or perhaps then you can show the video.

-08:-44:-04 **24** MR. IVEY: Following that, however it comes in, I

-08:-44:-04 **25** would like to play another clip of the same conversation but

-08:-44:-04 **1** this one I think should be played under the rule of completeness
-08:-44:-04 **2** because it puts the conversation in context of one of the
-08:-44:-04 **3** government's transcripts. It's what was said before the
-08:-44:-04 **4** government's, which I think is different.

-08:-44:-04 **5** THE COURT: Give them clip numbers or transcript
-08:-44:-04 **6** page numbers.

-08:-44:-04 **7** MR. SOFER: Exactly. We need to see this.

-08:-44:-04 **8** MR. IVEY: At this point, this might be a good time
-08:-44:-04 **9** to break because I'd like to show them. And if they have
-08:-44:-04 **10** objections I'd like to get it out of the way before I start
-08:-44:-04 **11** questioning the witness.

-08:-44:-04 **12** THE COURT: How long is it going to take?

-08:-44:-04 **13** MR. IVEY: To play the clip?

-08:-44:-04 **14** THE COURT: Show them and work this out. Five
-08:-44:-04 **15** minutes? Ten minutes?

-08:-44:-04 **16** MR. IVEY: Yeah, but it won't take long to show it
-08:-44:-04 **17** to them. How long it takes them to make their objection...

-08:-44:-04 **18** MR. SOFER: Well, presumably we've seen it. If we
-08:-44:-04 **19** can just put it in some sort of context.

-08:-44:-04 **20** THE COURT: Why don't you show it to them right
-08:-44:-04 **21** now. Come on back up. Just show them the transcript.

-08:-44:-04 **22** MR. SOFER: I don't want the jury to think that
-08:-44:-04 **23** we're slowing this down.

-08:-44:-04 **24** THE COURT: No, no.

-08:-44:-04 **25** MR. SOFER: I have to go back to my notes and

-08:-44:-04 **1** everything.

-08:-44:-04 **2** MR. IVEY: I don't know what your clip number is.

-08:-44:-04 **3** MR. SOFER: Our clip number is your clip number.

-08:-44:-04 **4** MR. IVEY: Do you want me to read it through?

-08:-44:-04 **5** THE COURT: Point it out to him so he can look at

-08:-44:-04 **6** it so Mr. Sofer knows what you're talking about.

-08:-44:-04 **7** MR. IVEY: The government's transcript excerpt

-08:-44:-04 **8** begins right here where Mr. Griffin is saying: Well, you know,

-08:-44:-04 **9** I was -- you know, with me, you know, being in the military and

-08:-44:-04 **10** everything beforehand. And then, you know, all my past

-08:-44:-04 **11** discretions; however, you know, I was thinking of taking the way

-08:-44:-04 **12** of the Shehada. And the tape will not say "female martyr".

-08:-44:-04 **13** It will say "Shehada". Then this is what the government

-08:-44:-04 **14** played. What we'd like to play is the beginning leading up to

-08:-44:-04 **15** that that shows the context of the conversation for which Mr.

-08:-44:-04 **16** Griffin made that statement.

-08:-44:-04 **17** MR. SOFER: If the argument is the rule of

-08:-44:-04 **18** completeness, then the question is whether or not there's

-08:-44:-04 **19** something, I'd like to inquire of Counsel what it is about what

-08:-44:-04 **20** the government played that takes it out of context. If there's

-08:-44:-04 **21** an argument about that, we're all ears. I have yet to hear

-08:-44:-04 **22** that.

-08:-44:-04 **23** MR. IVEY: Because they are clearly discussing

-08:-44:-04 **24** something totally unrelated. They're talking about the

-08:-44:-04 **25** prospects of Mr. Griffin getting married to an Islamic woman and

-08:-44:-04 **1** the virtues of that. Then he throws this statement in just like
-08:-44:-04 **2** that.

-08:-44:-04 **3** MR. SOFER: Then again, I think you could ask the
-08:-44:-04 **4** witness were there times when you changed the subject.

-08:-44:-04 **5** MR. BRYAN: He's mixing the rule of completeness.

-08:-44:-04 **6** THE COURT: I'm going to let him play it.

-08:-44:-04 **7** MR. SOFER: I'm not mixing the rule of
-08:-44:-04 **8** completeness.

-08:-44:-04 **9** (End of sidebar discussion.)

-08:-44:-04 **10** THE COURT: Ladies and gentlemen, there may be
-08:-44:-04 **11** times like this where Counsel and I have to resolve some
-08:-44:-04 **12** evidentiary questions. We all know these are coming up from
-08:-44:-04 **13** time to time. These there are issues we tried to address during
-08:-44:-04 **14** the adjournment, and among all of us we -- we realized that we
-08:-44:-04 **15** can't. They raise sometimes -- for me sometimes some
-08:-44:-04 **16** challenging issues. Please don't hold the interruption -- just
-08:-44:-04 **17** bear with us; be patient. It's simply the way I have to deal
-08:-44:-04 **18** with some of these questions, and don't hold it against anybody,
-08:-44:-04 **19** either in this instance Mr. Ivey, who's proffering evidence, or
-08:-44:-04 **20** Mr. Sofer, who may be raising objections, or anybody else. It's
-08:-44:-04 **21** simply the way we have to operate. I apologize and thank you
-08:-44:-04 **22** for your patience. And, obviously, don't speculate about what
-08:-44:-04 **23** it is we're talking about over there.

-08:-44:-04 **24** Go ahead, Mr. Ivey.

02:42:53 **25** BY MR. IVEY:

02:42:54 **1** **Q.** Just to refresh where we were for the jury, Mr. Griffin,
-08:44:04 **2** you had indicated that when you first began taping Mr. Amawi --
-08:44:04 **3** or the first clip at the time of the first clip that the jury
-08:44:04 **4** heard of your conversation with Mr. Amawi on June 30, that Mr.
02:43:17 **5** Amawi at that time or at any time had not had -- did not know
02:43:22 **6** Mr. Zubair or Mr. Khaleel, correct?

-08:44:04 **7** **A.** Correct.

02:43:26 **8** **Q.** Now, this was on June 30 when you taped Mr. Amawi that
-08:44:04 **9** the jury heard it, correct?

-08:44:04 **10** **A.** Yes.

02:43:37 **11** **Q.** Just before June 30 -- you can refer to your guide if
02:43:42 **12** you'd like -- you had a conversation with Mr. El-Hindi regarding
-08:44:04 **13** Mr. Zubair and Mr. Khaleel, correct?

-08:44:04 **14** **A.** Correct.

02:43:52 **15** **Q.** And it is your contention that Mr. El-Hindi mentioned
02:43:59 **16** that these two individuals, Zubair and Khaleel, wanted training
-08:44:04 **17** for Jihad, correct?

02:44:09 **18** **A.** That was my understanding.

02:44:13 **19** **Q.** And you had, as part of your duties as the operative,
-08:44:04 **20** you expressed a willingness to meet with Mr. Zubair and Mr.
02:44:22 **21** Khaleel, correct?

02:44:23 **22** **A.** Correct.

02:44:24 **23** **Q.** And you had agreed to meet with them at the ICNA
02:44:33 **24** conference in Cleveland, Ohio, around the 4th of July of 2004?

02:44:38 **25** **A.** Yes.

02:44:40 **1** Q. And that would have been obviously just a few handful of
02:44:44 **2** days after the June 30 when you taped Mr. Amawi, correct?
02:44:51 **3** A. Correct.
02:44:52 **4** Q. And again, your function -- well, your purpose in
02:44:58 **5** meeting or going to that conference really wasn't for the
02:45:03 **6** Islamic portion of it because in reality you're not really
02:45:07 **7** Muslim, correct?
02:45:09 **8** A. Correct.
02:45:10 **9** Q. You went there -- you were intending to go there as part
-08:-44:-04 **10** of your duties in identifying and gathering information on
02:45:20 **11** threats against the United States, correct?
02:45:24 **12** A. Actually, the primary duty was --
02:45:28 **13** THE COURT: That's not right. Answer the question.
-08:-44:-04 **14** Mr. Sofer will be able to have you elaborate.
02:45:39 **15** A. Would you say that again, please? I'm sorry.
-08:-44:-04 **16** BY MR. IVEY:
-08:-44:-04 **17** Q. You wanted to go to the ICNA conference in Cleveland to
-08:-44:-04 **18** meet Zubair and Khaleel because Mr. El-Hindi informed you they
-08:-44:-04 **19** wanted training for Jihad, correct?
-08:-44:-04 **20** A. That is incorrect. I was going there even before I
-08:-44:-04 **21** talked to Mr. El-Hindi.
02:45:55 **22** Q. But it was your intention when you were there as part of
02:45:59 **23** the reasons that you went was you could get information
02:46:03 **24** regarding Zubair and Khaleel because what Mr. El-Hindi had told
02:46:07 **25** you was -- fell within the purview of your duties as an

02:46:11 **1** operative top to find out if someone is prepared to carry out
-08:-44:-04 **2** some threat against the United States, either abroad or
02:46:19 **3** domestic, correct?
-08:-44:-04 **4** **A.** Correct.
02:46:22 **5** **Q.** And, in fact, that had to have been one of the reasons
-08:-44:-04 **6** you were there because you, in fact, audiotaped Mr. Zubair and
-08:-44:-04 **7** Mr. Khaleel at that conference, correct?
02:46:32 **8** **A.** Once again, it wasn't the primary reason, but...
-08:-44:-04 **9** **Q.** My question is not whether it's the reason, it's whether
-08:-44:-04 **10** you did it or not.
-08:-44:-04 **11** **A.** Yes.
-08:-44:-04 **12** **Q.** You did tape them at the conference?
02:46:43 **13** **A.** Yes.
-08:-44:-04 **14** **Q.** You taped them not for your own personal information,
-08:-44:-04 **15** you taped them for anybody to be able to see and hear what these
02:46:50 **16** individuals were saying?
02:46:51 **17** **A.** Correct.
-08:-44:-04 **18** **Q.** And you were taping them as part of your duties as an
02:46:55 **19** operative for the FBI, correct?
02:46:57 **20** **A.** Correct.
-08:-44:-04 **21** **Q.** And you didn't only just tape them, you videoed them,
-08:-44:-04 **22** correct?
-08:-44:-04 **23** **A.** Correct.
02:47:03 **24** THE COURT: You didn't just tape them?
02:47:05 **25** MR. IVEY: You videoed them, you took them on

-08:-44:-04 **1** video.

02:47:08 **2** THE COURT: Fine.

02:47:09 **3** THE WITNESS: Yes, sir.

02:47:10 **4** BY MR. IVEY:

02:47:10 **5** **Q.** Now, on June 30 -- scratch that.

02:47:16 **6** Your duty again, as you have said repeatedly, was

02:47:20 **7** information gathering, correct?

-08:-44:-04 **8** **A.** Correct.

02:47:23 **9** **Q.** But when you were at Mr. Amawi's on June 30 of 2004, you

02:47:30 **10** invited Mr. Amawi to that ICNA conference in Cleveland, didn't

-08:-44:-04 **11** you?

02:47:40 **12** **A.** I can't recall.

02:47:42 **13** **Q.** Okay. You did tape Mr. Amawi on June 30, do you concede

-08:-44:-04 **14** that?

02:47:51 **15** **A.** Yes.

02:48:04 **16** **Q.** Okay, I'm going to hand you a copy of the transcript of

-08:-44:-04 **17** your recording, the excerpt of your recording of Mr. Amawi.

02:48:13 **18** MR. SOFER: Counsel, can we take a look at that,

02:48:17 **19** please?

02:48:53 **20** BY MR. IVEY:

02:48:53 **21** **Q.** I'm going to show you an excerpt. This is the

02:48:58 **22** conversation -- read it if you like, but this is the portion of

-08:-44:-04 **23** your comments that I'm asking you --

02:49:05 **24** THE COURT: If you'll just read that to yourself

-08:-44:-04 **25** then Mr. Ivey will question further.

02:49:43 **1** MR. IVEY: I'm asking about this part.

-08:-44:-04 **2** MR. SOFER: Judge, we can't hear.

-08:-44:-04 **3** THE COURT: He's pointing out the portion.

02:50:17 **4** BY MR. IVEY:

02:50:17 **5** **Q.** So now my question is: You invited Mr. Amawi to that

02:50:21 **6** ICNA conference, didn't you?

-08:-44:-04 **7** **A.** If that represents the audio, that was -- if that comes

02:50:27 **8** directly from the audio, then yes. I will concede if you say

02:50:32 **9** it.

02:50:36 **10** THE COURT: And that is a transcript of a portion

-08:-44:-04 **11** of the conversation that the jury previously has seen, correct?

02:50:44 **12** MR. IVEY: Right.

02:50:45 **13** BY MR. IVEY:

02:50:45 **14** **Q.** So now he is a person of interest at this point, and the

-08:-44:-04 **15** reason you're taping him is the comment he made at the Mosque,

-08:-44:-04 **16** correct?

02:50:56 **17** **A.** Because I was informed by the FBI.

-08:-44:-04 **18** **Q.** You were informed by the FBI. And you already

02:51:02 **19** testified that one of -- one of the reasons you were going to

-08:-44:-04 **20** the ICNA conference was to tape and see and investigate what was

02:51:11 **21** going on with Zubair and Khaleel, correct?

-08:-44:-04 **22** **A.** Yes, one of the reasons.

-08:-44:-04 **23** **Q.** In your information gathering function, isn't it true

-08:-44:-04 **24** that you were actually trying to get Mr. Amawi to go to that

02:51:24 **25** conference so that you could put him in the video with Mr.

02:51:29 **1** Zubair and Mr. Khaleel and Mr. El-Hindi?

02:51:31 **2** **A.** Actually, that's incorrect.

02:51:33 **3** **Q.** You were with and taping a person of interest when you

-08:-44:-04 **4** were at Mr. Amawi's house, apartment, correct?

-08:-44:-04 **5** **A.** Correct.

-08:-44:-04 **6** **Q.** And you were going to this conference to tape possibly,

02:51:51 **7** video possibly, and investigate another person of interest,

02:51:56 **8** correct?

-08:-44:-04 **9** **A.** I was there to gather information, yes.

-08:-44:-04 **10** **Q.** And so -- in inviting Mr. Amawi, wasn't that an attempt

-08:-44:-04 **11** on your part to put Mr. Amawi in a video with Zubair and Khaleel

-08:-44:-04 **12** and Mr. El-Hindi to create the impression that somehow they are

02:52:17 **13** allied with each other?

-08:-44:-04 **14** **MR. SOFER:** Objection; asked and answered.

-08:-44:-04 **15** **THE COURT:** Also there's lots of parts to the

-08:-44:-04 **16** question. You may break it down if you wish. And you may

-08:-44:-04 **17** continue.

02:52:34 **18** **BY MR. IVEY:**

02:52:34 **19** **Q.** In the June 30, 2004 conversation that you taped with

-08:-44:-04 **20** Mr. Amawi, do you recall in that recording, the portion of it

-08:-44:-04 **21** that the government played where you indicated to Mr. Amawi that

-08:-44:-04 **22** you were thinking of or considering taking the way of the

02:52:58 **23** Shehada or martyr yourself --

02:53:01 **24** **A.** Yes.

-08:-44:-04 **25** **Q.** -- the government started out their transcript for the

02:53:11 **1** ladies and gentlemen of the jury with your comment to Mr. Amawi
02:53:16 **2** in that effect. But I'd like to play a clip that the
02:53:20 **3** government did not play of your conversation that led up to that
-08:-44:-04 **4** statement.
02:53:24 **5** MR. SOFER: We need the clip number, Counsel.
02:53:32 **6** MR. IVEY: It is 630, 04, Clip 3.
02:53:37 **7** THE COURT: Does that have an Exhibit Number?
02:53:40 **8** MR. WITMER-RICH: For the record it would be
02:53:42 **9** Exhibit Number A1-37-3.
02:53:55 **10** MR. SOFER: May we approach, Your Honor?
02:53:58 **11** (Whereupon the following discussion was had at the
03:00:50 **12** bench outside the hearing of the jury:)
03:00:50 **13** MR. SOFER: What -- are you playing this whole --
-08:-44:-04 **14** I'm trying to understand what Counsel is playing. I have what
-08:-44:-04 **15** was sent to us which is a four-page clip beginning with and yet
-08:-44:-04 **16** it covers everything.
-08:-44:-04 **17** MR. IVEY: I'm beginning with anything, anything is
-08:-44:-04 **18** fine.
-08:-44:-04 **19** MR. SOFER: That's not what was sent. I want to
-08:-44:-04 **20** make sure we're operating on the same page here, so to speak.
-08:-44:-04 **21** MR. SOFER: The government was sent a four-page --
-08:-44:-04 **22** first page and a half is not what you're planning on playing?
-08:-44:-04 **23** MR. WITMER-RICH: It's simply -- the clip that we
-08:-44:-04 **24** intend to play is what the government has. It is the three
-08:-44:-04 **25** pages leading up to the time when the government's clip began,

-08:-44:-04 **1** which is in yellow, and it simply demonstrates that they're
-08:-44:-04 **2** talking about unrelated matters: He's offering him juice,
-08:-44:-04 **3** they're talking about marriage, talking about women, and then he
-08:-44:-04 **4** starts, Griffin brings up taking the way of the Shehada. It's
-08:-44:-04 **5** not a five-minute clip. It doesn't go on.

-08:-44:-04 **6** THE COURT: In terms of its admissibility, aside
-08:-44:-04 **7** from whether or not they got it, I do think it's appropriate
-08:-44:-04 **8** because I now understand the thrust of your cross-examination,
-08:-44:-04 **9** to show how the approach was made and how he raised different
-08:-44:-04 **10** things and proposed -- proposed and undertook different
-08:-44:-04 **11** activities. I will say I don't know how much of this now you
-08:-44:-04 **12** want to show, but I do think it goes to his overall credibility
-08:-44:-04 **13** and general conduct of the investigation. So I'm going to let
-08:-44:-04 **14** it in.

-08:-44:-04 **15** But how many similar kinds of situations do you
-08:-44:-04 **16** propose to do now?

-08:-44:-04 **17** MR. IVEY: I have one other one on this
-08:-44:-04 **18** conversation that is shorter, that is again --

-08:-44:-04 **19** THE COURT: Total number of this kind of --

-08:-44:-04 **20** MR. IVEY: I have one other one that is somewhat
-08:-44:-04 **21** substantive. And I have about six that are like three lines
-08:-44:-04 **22** long.

-08:-44:-04 **23** MR. WITMER-RICH: And those are serving a different
-08:-44:-04 **24** purpose. As to this type, we have a couple where we're showing
-08:-44:-04 **25** the intro of the conversation.

1 THE COURT: I think it's appropriate for them to
2 show that Mr. Griffin interjected the subjects into
3 conversations that otherwise were not at that point involving
4 those subjects and that he raised them, just as they are showing
5 that he provided the guns and so forth, then people can argue
6 about the significance.

7 MR. SOFER: I don't disagree with sort of basic
8 concept a little bit. What I'm concerned about, Judge, is I
9 mean we could put in literally hundreds of hours of what we've
10 described as innocent, relatively innocent conversations between
11 the defendants and Mr. Griffin, and I think if you just asked
12 him the question, did you bring up the subjects...

13 THE COURT: I'm going to permit this because
14 there's a difference between when there's a linkage between
15 something that the jury has seen, and if there were -- if they
16 had not seen any portion of this conversation, or it had been an
17 hour long conversation, and jumping about... But where there's
18 this linkage to flow into what they saw or picking up after what
19 they saw, I'm going to permit it.

20 MR. SOFER: Again, Judge, just for the record I
21 think, while some of that would be permissible in the direct
22 case of the defense, I'm asking Your Honor -- again, I would be
23 perfectly willing to entertain some of this, the government
24 wouldn't object to some of this. I think if we do this six, ten
25 times, it doesn't behoove anybody. When you could ask the

-08:-44:-04 **1** question on cross-examination and bring that out, it's

-08:-44:-04 **2** appropriate.

-08:-44:-04 **3** THE COURT: I'm going to permit this.

-08:-44:-04 **4** MR. SOFER: Also, Your Honor, I ask for an

-08:-44:-04 **5** instruction about -- in a very carefully tailored instruction

-08:-44:-04 **6** about what the purpose of the admission of this is. That is

-08:-44:-04 **7** that it's being admitted to show the back and forth perhaps or

-08:-44:-04 **8** the interaction between the defendant and Mr. Griffin, but not

-08:-44:-04 **9** for the truth of these out-of-court statements by Mr. Amawi

-08:-44:-04 **10** which, concededly, they're not particularly substantive, but are

-08:-44:-04 **11** still not admitted for the truth.

-08:-44:-04 **12** MR. WITMER-RICH: Indeed.

-08:-44:-04 **13** THE COURT: Okay. I will tell the jury that they

-08:-44:-04 **14** now are about to see -- may see other portions of recorded

-08:-44:-04 **15** conversations that were linked in time to portions they've

-08:-44:-04 **16** already seen and statements made by either Mr. Amawi or Mr.

-08:-44:-04 **17** Griffin are not offered for the truth but to simply show the

-08:-44:-04 **18** nature -- the conversation itself, who said what.

-08:-44:-04 **19** (End of sidebar discussion.)

03:00:57 **20** THE COURT: Ladies and gentlemen, I anticipate that

03:01:01 **21** you are about to see, at least will have reference to recorded

-08:-44:-04 **22** conversations between Mr. Griffin and Mr. Amawi, perhaps between

-08:-44:-04 **23** him and others, I'm not sure, but at least with respect to Mr.

-08:-44:-04 **24** Griffin and Mr. Amawi, and what you will be seeing, I expect,

-08:-44:-04 **25** will be portions of a conversation, a part of which you've

-08:-44:-04 **1** already seen in the government's case. And you should
-08:-44:-04 **2** understand that you'll be seeing more of the conversation that
03:01:43 **3** is being -- that it's being offered for that purpose, to show
-08:-44:-04 **4** what either preceded or followed what you've already seen and
-08:-44:-04 **5** heard, or heard, and that this, again, is an instance where the
03:01:59 **6** evidence you're about to see is offered simply to show what the
03:02:03 **7** conversation was, who said what. It's not offered for the
-08:-44:-04 **8** truth of any of the statements that were being made. But you
-08:-44:-04 **9** may consider it --

-08:-44:-04 **10** MR. SOFER: Judge just for the clarification there
-08:-44:-04 **11** are portions I think that are already in evidence. So those
-08:-44:-04 **12** portions I believe are evidence and have been offered for the
03:02:24 **13** truth.

-08:-44:-04 **14** THE COURT: In other words, it's a somewhat tricky
03:02:29 **15** concept. But when the government offered it, you can consider
03:02:32 **16** it as the statements made by Mr. Amawi for the truth of what was
-08:-44:-04 **17** being asserted. When the defendant offers this, it's evidence
-08:-44:-04 **18** only of the statement being made.

03:02:48 **19** Okay. You may continue.

03:02:54 **20** BY MR. IVEY:

03:02:55 **21** Q. Just to bring the jury up to where we were, you had
03:02:58 **22** recalled on this date, this is where you on June 30, '04 had
03:03:03 **23** indicated to Mr. Amawi that you wanted to take the way of
03:03:07 **24** martyrdom of the Shehada?

-08:-44:-04 **25** A. I believe.

03:03:10 **1** Q. They've seen the clip of that. I'd like to play the
-08:-44:-04 **2** portion preceding your comment that the government did not play.
03:03:20 **3** THE COURT: Do we need headphones?
03:03:51 **4** (Audio played.)
03:06:54 **5** MR. IVEY: Stop.
03:06:56 **6** BY MR. IVEY:
-08:-44:-04 **7** Q. Now, Mr. Griffin, prior to you making that statement,
03:07:01 **8** you and Mr. Amawi were talking about potentially going to see a
-08:-44:-04 **9** movie?
-08:-44:-04 **10** A. Yes.
-08:-44:-04 **11** Q. And prior to you making that statement, Mr. Amawi had
-08:-44:-04 **12** offered you something to drink?
-08:-44:-04 **13** A. Yes.
-08:-44:-04 **14** Q. And prior to you making that statement, Mr. Amawi was
03:07:16 **15** talking about women and them being a temptation?
-08:-44:-04 **16** A. Yes.
-08:-44:-04 **17** Q. Mr. Amawi didn't say anything even remotely related to
-08:-44:-04 **18** going, as you interjected here, in talking about becoming a
03:07:31 **19** martyr, did he? You interjected that in that conversation,
-08:-44:-04 **20** didn't you?
-08:-44:-04 **21** A. Because of the prior conversation, yes.
03:07:39 **22** Q. And Mr. Amawi didn't even pick up on this at first
-08:-44:-04 **23** because you're talking about women and he says --
03:07:49 **24** MR. IVEY: Continue.
-08:-44:-04 **25** (Audio played.)

03:08:06 **1** MR. IVEY: Stop. Go back. The line before.

03:08:14 **2** (Audio played.)

03:08:18 **3** BY MR. IVEY:

-08:-44:-04 **4** **Q.** Now, what Mr. Amawi says is: Man, what you think about

-08:-44:-04 **5** going to another country and getting married? That fits the

-08:-44:-04 **6** conversation that you were having with him about the possibility

-08:-44:-04 **7** of getting married, two of you not being married, the virtues of

-08:-44:-04 **8** a Muslim wife, correct?

-08:-44:-04 **9** **A.** They all fit together.

03:08:36 **10** **Q.** But Mr. Amawi, you will concede, does not say anything

-08:-44:-04 **11** about becoming a martyr or blowing himself up or taking any type

-08:-44:-04 **12** of violent Jihad in the lines that the jury just heard leading

-08:-44:-04 **13** up to your comment?

-08:-44:-04 **14** **A.** Correct.

03:08:50 **15** **Q.** And after you make your comment, Mr. Amawi says, which

-08:-44:-04 **16** is evident here: Man, what you think about going to another

-08:-44:-04 **17** country and getting married there?

-08:-44:-04 **18** **A.** Yeah, I was being proactive.

-08:-44:-04 **19** **Q.** You were being proactive. You were not gathering

-08:-44:-04 **20** information, you were being proactive in your duties as an

03:09:11 **21** operative by interjecting something into the conversation

03:09:14 **22** knowing that you're taping it, correct?

03:09:20 **23** **A.** I was proactive because I knew what the next question

-08:-44:-04 **24** was coming up, which is exactly what happened, what do I think

-08:-44:-04 **25** about getting...

-08:-44:-04 **1** THE COURT: Again, I'm sorry. You'll have ample
03:09:31 **2** opportunity to -- you'll have ample opportunity to elaborate.

-08:-44:-04 **3** Answer the questions that are asked. Okay.

-08:-44:-04 **4** MR. IVEY: Okay, Your Honor, I have --

03:09:44 **5** THE COURT: Did you want to return to that

-08:-44:-04 **6** question?

03:09:47 **7** MR. IVEY: No. I have one more potential clip.

03:09:51 **8** And I don't know, I'm assuming I'm going to have to make the

-08:-44:-04 **9** same presentation to the Court that I did on the previous one.

03:10:01 **10** THE COURT: Let's do this. Why don't we take the

03:10:04 **11** noon time recess, and I have an appointment shortly after noon

03:10:15 **12** out of the building, but I should be back by 1:00 so we will

03:10:19 **13** plan to resume at 1:00. If for any reason it will be much

-08:-44:-04 **14** later, I'll notify my office and Cindy will let you know. Keep

-08:-44:-04 **15** an open mind; we'll see you at 1:00 I hope.

03:31:59 **16** (Whereupon the following discussion was had at the

-08:-44:-04 **17** bench outside the hearing of the jury:)

-08:-44:-04 **18** MR. SOFER: I want to go back to the first one. I

-08:-44:-04 **19** think it illustrates what the problem is here. The defense has

-08:-44:-04 **20** played the beginning part of this transcript. I don't agree

-08:-44:-04 **21** with the way the Court's ruled on this, but I understand what

-08:-44:-04 **22** the concept is here. What we can't do is then cut the

-08:-44:-04 **23** government's piece out. This is the rule of completeness.

-08:-44:-04 **24** THE COURT: I would agree. I think you have to

-08:-44:-04 **25** play the government's piece.

-08:-44:-04 **1** MR. SOFER: Judge, what they've done is stopped
-08:-44:-04 **2** this before and the witness tried to say it's what's coming. I
-08:-44:-04 **3** would add, Your Honor, I think the witness, although I know -- I
-08:-44:-04 **4** just ask for fairness here. If Your Honor is going to limit
-08:-44:-04 **5** the witness's answers, which I think is appropriate. We're
-08:-44:-04 **6** going to be asking for the same thing if and when the defense
-08:-44:-04 **7** are being questioned.

-08:-44:-04 **8** THE COURT: I agree. I'm very stringent.

-08:-44:-04 **9** MR. SOFER: Here's what the government played.
-08:-44:-04 **10** They link the transcript; it's a lengthy interaction. They
-08:-44:-04 **11** can't at the same time complain that we're selecting --

-08:-44:-04 **12** THE COURT: I agree with you.

-08:-44:-04 **13** MR. SOFER: And, again, I don't think we have to
-08:-44:-04 **14** play the whole thing because some of these are very lengthy, but
-08:-44:-04 **15** at least you've got let it run to some fair point.

-08:-44:-04 **16** THE COURT: So they know what it's connected to.

-08:-44:-04 **17** MR. SOFER: Otherwise, you're manipulating.

-08:-44:-04 **18** THE COURT: Let me suggest this to you. Why don't
-08:-44:-04 **19** you see if you can come to some agreement when we start back up
-08:-44:-04 **20** at noon.

-08:-44:-04 **21** MR. WITMER-RICH: We've cut these clips, we have to
-08:-44:-04 **22** re --

-08:-44:-04 **23** MR. SOFER: Play it.

-08:-44:-04 **24** MR. IVEY: We --

-08:-44:-04 **25** THE COURT: My point is the purpose of

-08:-44:-04 **1** completeness, at least in a situation such as this where we've
-08:-44:-04 **2** had dozens of clips over -- we're now what, the third week of
-08:-44:-04 **3** Mr. Griffin's testimony, and after a week interlude, and for the
-08:-44:-04 **4** jury to even understand what you're talking about I think it's
-08:-44:-04 **5** necessary and appropriate that they hear the entire thing.
-08:-44:-04 **6** Now, I think the easier way to do that is to simply
-08:-44:-04 **7** have the exchange read by Mr. Griffin, if he can do so slowly
-08:-44:-04 **8** and clearly. In order. Also, you please read what you said and
-08:-44:-04 **9** what he said and then have them continue on into and maybe even
-08:-44:-04 **10** at that point the jury will recall that the following was
-08:-44:-04 **11** viewed. I can say we're simply not technologically prepared to
-08:-44:-04 **12** do this, have you see the clips again.

-08:-44:-04 **13** MR. SOFER: Well, that, Judge, could take -- to
-08:-44:-04 **14** have him -- first of all, I don't think he's probably the most
-08:-44:-04 **15** avid reader. There are times you haven't been able to hear
-08:-44:-04 **16** him. I found he has a fuzzy sort of voice. We can move this
-08:-44:-04 **17** along much faster if you let us play the rest of this. Again,
-08:-44:-04 **18** I'm not seeking anything in this particular one, the concept is
-08:-44:-04 **19** this thing goes on --

-08:-44:-04 **20** THE COURT: I agree. They shouldn't just get a
-08:-44:-04 **21** snippet that's detached from what it is you are contending must
-08:-44:-04 **22** be completed for the jury because they're really floating
-08:-44:-04 **23** without...

-08:-44:-04 **24** MR. BRYAN: They're giving an advantage we didn't
-08:-44:-04 **25** have.

MR. IVEY: We had to live with what they cut out.

THE COURT: I understand. But I'm simply saying I

don't think they're getting an advantage and I can explain to

the jury that all that is being done is so that their ability to

comprehend what they are hearing at this point can be complete.

Whatever it is. If this is going to come in for completeness,

then it's going to come in in a meaningful way so the jury knows

what's being completed. That's all I'm saying. Again, I

don't want to have six, seven, eight, ten minutes, but enough of

a linkage at some point then the jury can recall and both of you

can argue from that when the time comes. Otherwise, the jury's

not going to have the foggiest idea what this is. And I

misunderstood. I thought that's what was going to happen.

What I'm saying is, if you can do it

technologically so there can be a blending in the next hour of

one or more of these clips, try that. If you can't, I will

simply say: Ladies and gentlemen, the case is not with the

government, not with the government. This is not being offered

as proof of anything by the government. It's simply so you

understand how these segments flow one to the other, which is

what completeness is all about.

MR. SOFER: As long as they understand, I have no

problem with that. Again, certain portions, I don't want them

to think that the part that's been played is not evidence

because that is the evidence in the case.

-08:-44:-04 **1** THE COURT: It's both evidence. This is evidence,
-08:-44:-04 **2** too.

-08:-44:-04 **3** MR. SOFER: Understood, but it's not evidence for
-08:-44:-04 **4** its truth.

-08:-44:-04 **5** THE COURT: I understand. I've already given that
-08:-44:-04 **6** instruction.

-08:-44:-04 **7** MR. SOFER: Yes, Judge.

-08:-44:-04 **8** MR. IVEY: Can I make a record?

-08:-44:-04 **9** THE COURT: Of course.

-08:-44:-04 **10** MR. IVEY: I think to permit the government to
-08:-44:-04 **11** essentially rebut to this jury what the defense is doing in the
-08:-44:-04 **12** middle of defense's cross-examination is patently prejudicial to
-08:-44:-04 **13** the defendants because we had to live -- my whole point was they
-08:-44:-04 **14** left out stuff that should have been played but we had to wait
-08:-44:-04 **15** until our time for cross-examination. We could not get up in
-08:-44:-04 **16** the middle of their presentation then have additional
-08:-44:-04 **17** transcripts played. I mean, we feel that they didn't put in
-08:-44:-04 **18** things that they should. So every time we play a clip, they get
-08:-44:-04 **19** to put in --

-08:-44:-04 **20** THE COURT: Perhaps question it this way. My
-08:-44:-04 **21** point is, this is not a day or two worth of testimony, which is
-08:-44:-04 **22** far more commonplace: Do you recall you testified this, that or
-08:-44:-04 **23** the other thing two days ago? Testified to this conversation?
-08:-44:-04 **24** Will you please look at the transcript and begin eight lines
-08:-44:-04 **25** before the portion that you testified. Read to the jury what

-08:-44:-04 **1** you said. Alternatively, if you want to say on that date the
-08:-44:-04 **2** government played a portion of the transcript in which this
-08:-44:-04 **3** subject was said and you said this, you said that, in summary
-08:-44:-04 **4** fashion.

-08:-44:-04 **5** But my point simply is it's going to be under the
-08:-44:-04 **6** rule of completeness, there has to be a linkage, there has to be
-08:-44:-04 **7** a joinder. I understand your concern. And I'm not trying to
-08:-44:-04 **8** give them rebuttal or anything else. I'm not saying we're
-08:-44:-04 **9** going to play the entire excerpt, okay. But --

-08:-44:-04 **10** MR. IVEY: Am I to understand, Your Honor, whenever
-08:-44:-04 **11** we play a clip that we then have the risk that during our
-08:-44:-04 **12** cross-examination the government is going to be able to played a
-08:-44:-04 **13** distributional thing as opposed to playing what they want in
-08:-44:-04 **14** redirect? That's at my peril. They can Get up and say Mr.
-08:-44:-04 **15** Ivey didn't play the rest of this. Now we're going to play it.
-08:-44:-04 **16** My issue is why does our cross-examination have to be
-08:-44:-04 **17** interrupted when they can do it on redirect? We're doing this
-08:-44:-04 **18** after they're done with their presentation on cross. That
-08:-44:-04 **19** signals to the jury --

-08:-44:-04 **20** THE COURT: But --

-08:-44:-04 **21** MR. IVEY: -- that somehow we're doing something.

-08:-44:-04 **22** THE COURT: At the very least I'll let you

-08:-44:-04 **23** elaborate. I'm just trying so the jury understands what is

-08:-44:-04 **24** connected.

-08:-44:-04 **25** MR. IVEY: Our next clip I believe connects these.

-08:-44:-04 **1** And it again is -- it's about five or six lines before what the
-08:-44:-04 **2** government played. So my question -- I want to know now before
-08:-44:-04 **3** I do this, tactically after I play this, is the government going
-08:-44:-04 **4** to get up and say now you've got to play some more stuff?

-08:-44:-04 **5** THE COURT: I'm hearing what you're saying. I
-08:-44:-04 **6** think -- I'm just trying to make it so the jury's going to
-08:-44:-04 **7** understand this. It's got these random bits and pieces, dozens
-08:-44:-04 **8** of these. I don't know how many, but there's lots and lots of
-08:-44:-04 **9** clips of all different kinds, all different times and dates and
-08:-44:-04 **10** different people. At the very least I think you should say,
-08:-44:-04 **11** and then the conversation continued on the subject of X or Y, so
-08:-44:-04 **12** that the jury knows what you're talking about.

-08:-44:-04 **13** MR. IVEY: I will do that.

-08:-44:-04 **14** MR. SOFER: Judge, may I respond? We're talking
-08:-44:-04 **15** about a rule in the rules of evidence. The rule specifically
-08:-44:-04 **16** states -- specifically states that an objection under the rule
-08:-44:-04 **17** of completeness is, first of all, that a statement, if left by
-08:-44:-04 **18** itself would essentially be a misrepresentation or confuse the
-08:-44:-04 **19** jury.

-08:-44:-04 **20** MR. BRYAN: It doesn't say misrepresentation.

-08:-44:-04 **21** MR. SOFER: The case law.

-08:-44:-04 **22** THE COURT: Don't interrupt.

-08:-44:-04 **23** Rule number?

-08:-44:-04 **24** MR. SOFER: 106. What it says, it also talks about
-08:-44:-04 **25** timing. It says when a writing or recorded statement or part

-08:-44:-04 **1** thereof is introduced by a party, an adverse party may require
-08:-44:-04 **2** the introduction at that time of any other part or any other
-08:-44:-04 **3** writing or recorded statement which ought in fairness to be
-08:-44:-04 **4** considered contemporaneously with it. That is the rule.
-08:-44:-04 **5** Your Honor, the defense says they couldn't have
-08:-44:-04 **6** done this. But actually, as the government's maintained
-08:-44:-04 **7** throughout, they could have done this. The appropriate time to
-08:-44:-04 **8** be making this argument would have been during the government's
-08:-44:-04 **9** case and, frankly, I would have been more than happy to play
-08:-44:-04 **10** whatever additional portions to some extent anybody thought was
-08:-44:-04 **11** done in order to fairly place these conversations in some sort
-08:-44:-04 **12** of context. That's what our objection essentially to this is,
-08:-44:-04 **13** the rule of completeness. They want to complete something, you
-08:-44:-04 **14** have to show the jury what they're completing and I don't think
-08:-44:-04 **15** it's fair then, especially in light of the delay we've had and
-08:-44:-04 **16** the jury have and having lots of these conversations they're
-08:-44:-04 **17** going to be left with the notion that nothing followed this. I
-08:-44:-04 **18** don't think that's fair to the government's case.

-08:-44:-04 **19** Logistically, how we accomplish that --

-08:-44:-04 **20** MR. WITMER-RICH: About the rule of completeness
-08:-44:-04 **21** specifically, the rule is based on a common law principle, the
-08:-44:-04 **22** rule of completeness, which is much -- which does not only
-08:-44:-04 **23** concern the contemporaneous, that is an aspect of how the rule
-08:-44:-04 **24** of completeness can be achieved, but the idea is so the jury can
-08:-44:-04 **25** understand in fairness what one section of a writing, or here a

-08:-44:-04 **1** recorded statement, means by considering another portion of that
-08:-44:-04 **2** recorded statement or any other recorded statement, for that
-08:-44:-04 **3** matter, is what the rule says. And the case --

-08:-44:-04 **4** We sent case law to Your Honor a couple days ago.
-08:-44:-04 **5** We haven't had a chance to brief this but the Beech Aircraft
-08:-44:-04 **6** case where Justice Brennan writes the majority opinion, and
-08:-44:-04 **7** other cases, the Court has the discretion to structure the way
-08:-44:-04 **8** that the jury will best understand and accomplish these
-08:-44:-04 **9** purposes.

-08:-44:-04 **10** THE COURT: What I'm saying, this timely permits
-08:-44:-04 **11** you to continue, but I'm going to require that you do so in a
-08:-44:-04 **12** way that the jury understands the linkage and has called to its
-08:-44:-04 **13** mind what it previously heard. Otherwise, it's an incomplete
-08:-44:-04 **14** situation.

-08:-44:-04 **15** MR. WITMER-RICH: I think we understand that, Your
-08:-44:-04 **16** Honor.

-08:-44:-04 **17** THE COURT: I have no problem with your tactical
-08:-44:-04 **18** decision to wait. Now I forgot that requirement of the rule.
-08:-44:-04 **19** But we are where we are. And however you want to handle it,
-08:-44:-04 **20** but in a way that fairly enables the jury to understand what
-08:-44:-04 **21** came after this, okay. And if you can agree that Mr. Ivey can
-08:-44:-04 **22** then read that, ladies and gentlemen, so that you recall,
-08:-44:-04 **23** read -- I hope you can agree on the number of lines or whatever,
-08:-44:-04 **24** you have a huge long excerpt, not the whole thing, but I'm not
-08:-44:-04 **25** going to let you simply get that little snippet and that's it

-08:-44:-04 **1** because, if nothing else, if this comes in, it's kind of upside
-08:-44:-04 **2** down. We're arguing the rule of completeness. I'm going to
-08:-44:-04 **3** then allow them to invoke the rule because that's what the rule
-08:-44:-04 **4** says. Although technically I think I could probably sustain
-08:-44:-04 **5** their objection and say tough luck, guys, you should have done
-08:-44:-04 **6** this two weeks ago. That's all.

-08:-44:-04 **7** MR. IVEY: I have a practical question. For my
-08:-44:-04 **8** next clip I just want to play four or five lines before the
-08:-44:-04 **9** government's transcript again. I'd like to know ahead of time
-08:-44:-04 **10** from the government what else they want played.

-08:-44:-04 **11** THE COURT: That's fine. I have an appointment at
-08:-44:-04 **12** noon off campus. And I don't -- I'm not going to sit here
-08:-44:-04 **13** while the two of you try to work that out. I hope that you can
-08:-44:-04 **14** so that we don't keep the jury upstairs all afternoon fussing
-08:-44:-04 **15** about this. Now, my question is, also, just a sense of how
-08:-44:-04 **16** much longer, this afternoon, I'm just curious. I'm not
-08:-44:-04 **17** restraining you at all. I'm curious.

-08:-44:-04 **18** MR. IVEY: I have some more clips that I want to
-08:-44:-04 **19** play. I just want to say this, I'm sure there's going to be
-08:-44:-04 **20** debate over whether I can play them. But aside from how long
-08:-44:-04 **21** that goes, I would have probably about two hours.

-08:-44:-04 **22** THE COURT: That's fine. We may get done today.
-08:-44:-04 **23** But get as much of this tidied up in light of what I'm
-08:-44:-04 **24** instructing them. I'm instructing them so I'm going to let you
-08:-44:-04 **25** play these clips. I understand what you're doing. I think

-08:-44:-04 1 it's appropriate cross-examination. However, I'm not going to
-08:-44:-04 2 let them hang to out there without some communication to the
-08:-44:-04 3 jury of what came either before or after, which side of it was.
-08:-44:-04 4 That's all. I would hope that you can do this in a way that it
-08:-44:-04 5 takes cognizance of the jury's need to understand but without
-08:-44:-04 6 having replayed all of everything.
-08:-44:-04 7 I'll be back I hope by 1:00 or 1:15. Please spend
-08:-44:-04 8 the noon hour working away at this, laying out for them what
-08:-44:-04 9 you're going to do and try to reach some agreement as to what's
-08:-44:-04 10 going to be displayed, in whatever fashion it is.

03:32:06 11 (End of sidebar.)

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14 C E R T I F I C A T E

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16 I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter.

18

19 /s Tracy L. Spore _____

20 Tracy L. Spore, RMR, CRR Date

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I N D E X

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DARREN GRIFFIN, CROSS-EXAMINATION3155
BY MR. IVEY: